

To: Jordan, Ronald[Jordan.Ronald@epa.gov]
From: Brown, Samuel L.
Sent: Tue 10/6/2015 2:56:19 PM
Subject: Re: ABA Water Quality and Wetlands Committee Program

No problem. Thanks, Ron - Sam

On Oct 6, 2015, at 7:46 AM, Jordan, Ronald
<Jordan.Ronald@epa.gov<mailto:Jordan.Ronald@epa.gov>> wrote:

Hi Sam,

It's good to hear from you. Thanks for the opportunity but we won't be able to participate.
Good luck with your conference!

Regards,
Ron

From: Brown, Samuel L. [mailto:SlBrown@hunton.com]
Sent: Monday, October 05, 2015 2:40 PM
To: Jordan, Ronald; Zomer, Jessica
Cc: Levine, MaryEllen; Matuszko, Jan
Subject: ABA Water Quality and Wetlands Committee Program

Hi Jessica & Ron,

I hope you're well and congratulations on getting the Steam Electric ELG out the door last week! I am writing because I am a vice-chair on the ABA's Water Quality and Wetlands Committee. We're putting together the fall line-up of educational programs and the final rule came up as a potential topic.

Would you two (and/or MEL and Jan) be interested in participating in a Committee conference call sometime in October to provide an overview of the final rule? I am thinking the call would last 1 hour total—a 30-40 minute presentation of the final rule and the remainder for Q&A, or something along those lines. Myself or someone else on the Committee would likely moderate the call.

I know people would much rather hear from EPA than from industry attorneys on the final rule. Talk it over and let me know what you think or if you have questions. Obviously, if there are sensitivities at this time on certain subject matter associated with the final rule we can work around that.

Thanks! – Sam

[Hunton and Williams]

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San Francisco, CA 94105
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To: Brown, Samuel L.[SlBrown@hunton.com]; Zomer, Jessica[Zomer.Jessica@epa.gov]
Cc: Levine, MaryEllen[levine.maryellen@epa.gov]; Matuszko, Jan[Matuszko.Jan@epa.gov]
From: Jordan, Ronald
Sent: Tue 10/6/2015 2:46:27 PM
Subject: RE: ABA Water Quality and Wetlands Committee Program

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Regards,

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Sent: Monday, October 05, 2015 2:40 PM
To: Jordan, Ronald; Zomer, Jessica
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Subject: ABA Water Quality and Wetlands Committee Program

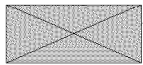
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Thanks! – Sam



Samuel Brown

Senior Attorney

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575 Market St.
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To: McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]; Levine, MaryEllen[levine.maryellen@epa.gov]; Zomer, Jessica[Zomer.Jessica@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Thomas Cmar[tcmar@earthjustice.org]; 'Sheehan, John A.'[JSheehan@ClarkHill.com]; Grever, Tom (SHB)[TGREVER@shb.com]; 'Sullivan, Sean M.'[Sean.Sullivan@troutmansanders.com]; joshua.smith@sierraclub.org[joshua.smith@sierraclub.org]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; Matthew Gerhart[mgerhart@earthjustice.org]
Cc: Bulleit, Kristy[kbulleit@hunton.com]
From: Johnson, Harry M. ("Pete")
Sent: Wed 4/27/2016 9:47:37 PM
Subject: RE: STEAM ELECTRIC REVISED BRIEFING SCHEDULE
[removed.txt](#)

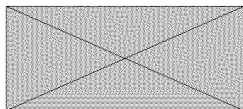
Martin, et al.,

Because the Industry Petitioners' joint brief will include the separate arguments of multiple parties (eg, Duke and City Utilities filed separate petitions), we continue to believe that 20,000 and 10,000 words, respectively, are necessary and appropriate for the IPs' opening and reply briefs. We had accepted your earlier suggested limit of 7500 words for intervenor briefs (this latest proposal increases them to 8750), and we strongly prefer to have the IPs' word count limits focus more on the opening and reply briefs. Our 20,000/10,000 proposal is still less than the 28,000/14,000 limits in the scheduling orders from the 2nd Circuit's 316(b) cases in 2006 and 2015.

Also, because of the nature of the expected motion(s) to complete the record, we do not feel 30 pages is sufficient. We can agree to drop our request to 35 pages.

Regards,

Pete



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From: McDermott, Martin (ENRD) [mailto:Martin.McDermott@usdoj.gov]

Sent: Wednesday, April 27, 2016 3:24 PM

To: Johnson, Harry M. ("Pete"); Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Bulleit, Kristy; Thomas Cmar; 'Sheehan, John A.'; Grever, Tom (SHB); 'Sullivan, Sean M.'; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Matthew Gerhart

Subject: STEAM ELECTRIC REVISED BRIEFING SCHEDULE

Dear Counsel – attached is a revised briefing schedule for your consideration. While EPA believes that the prior proposal allowed for sufficient word counts, in the interest of compromise we propose a schedule that allows Industry Petitioners and Environmental Petitioners to each file merits briefs (including intervenor briefs) totaling 35,000 words – 17,500 (opening) plus 8,750 (intervention) plus 8,750 (reply). EPA would, as before, maintain word count parity with the Petitioners. We left the timing unchanged.

As for the motions briefing, we propose a compromise of 50% increase over FRAP 27 page limits.

We also agree with Pete's suggestion that we include language about accommodating scheduling conflicts.

Please let me know if we can proceed on this basis. Martin

To: McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]; Levine, MaryEllen[levine.maryellen@epa.gov]; Zomer, Jessica[Zomer.Jessica@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Thomas Cmar[tcmar@earthjustice.org]; 'Sheehan, John A.'[JSheehan@ClarkHill.com]; Grever, Tom (SHB)[TGREVER@shb.com]; 'Sullivan, Sean M.'[Sean.Sullivan@troutmansanders.com]; joshua.smith@sierraclub.org[joshua.smith@sierraclub.org]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; Matthew Gerhart[mgerhart@earthjustice.org]
Cc: Bulleit, Kristy[kbulleit@hunton.com]
From: Johnson, Harry M. ("Pete")
Sent: Mon 4/25/2016 10:34:57 PM
Subject: RE: ENV_DEFENSE-#763613-v1-STEAM_ELECTRIC_PROPOSED_SCHEDULE_APRIL_22_DRAFT.docx
[removed.txt](#)

Martin, et al.,

I don't yet have final approval from all our clients, but in the interest of time, I wanted to share these thoughts for the group's consideration. We reserve all rights until I have sign-off.

The revised schedule for briefing appears acceptable. Martin has added time to the govt's deadline from 75 days to 120 days, but the other deadlines are the same as originally proposed if my notes are correct.

The length of briefs requires a few changes. We propose increasing the limit to 20,000 words for Industry Petitioners' opening briefs and 10,000 words for their reply. By way of comparison, the Rule 316(b) scheduling order in the 2nd Circuit allowed 28,000 words to petitioners for opening briefs.

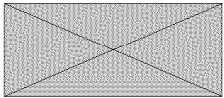
We also suggest that the order provide for record motions to be 40 pages, not the default 20 pages under the Federal Rules. These motions will be particularly fact-intensive, involving discussions of specific withheld or redacted documents and explaining each of their importance to the rulemaking, in addition to the legal arguments. 40 pages is more appropriate.

For the text of the joint motion, we also propose including language to the following effect: "To the extent that briefing deadlines ultimately fall over holidays or create other unavoidable scheduling conflicts, the parties will consider in good faith agreeing to move

jointly for slight modifications to the deadlines to reasonably accommodate schedules.”

Best regards,

Pete



Harry M. Johnson, III

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This communication is confidential and is intended to be privileged pursuant to applicable law. If the reader of this message is not the intended recipient, please advise by return email immediately and then delete this message and all copies and backups thereof.

From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]

Sent: Friday, April 22, 2016 1:09 PM

To: Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Bulleit, Kristy; Thomas Cmar; 'Sheehan, John A.'; Grever, Tom (SHB); 'Sullivan, Sean M.'; Johnson, Harry M. ("Pete"); joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Matthew Gerhart; McDermott, Martin (ENRD)

Subject: ENV_DEFENSE-#763613-v1-
STEAM_ELECTRIC_PROPOSED_SCHEDULE_APRIL_22_DRAFT.docx

Counsel – Attached is a proposed schedule for the Steam Electric matter. Please let me know

whether it meets with your approval. Thank you. Martin

To: Levine, MaryEllen[levine.maryellen@epa.gov]; Zomer, Jessica[Zomer.Jessica@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Bulleit, Kristy[kbulleit@hunton.com]; Thomas Cmar[tcmar@earthjustice.org]; 'Sheehan, John A.'[JSheehan@ClarkHill.com]; Grever, Tom (SHB)[TGREVER@shb.com]; 'Sullivan, Sean M.'[Sean.Sullivan@troutmansanders.com]; Johnson, Harry M. (Pete)[pjohnson@hunton.com]; joshua.smith@sierraclub.org[joshua.smith@sierraclub.org]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; Matthew Gerhart[mgerhart@earthjustice.org]; McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]
From: McDermott, Martin (ENRD)
Sent: Fri 4/22/2016 5:08:47 PM
Subject: ENV_DEFENSE-#763613-v1-STEAM_ELECTRIC_PROPOSED_SCHEDULE_APRIL_22_DRAFT.docx
ENV_DEFENSE-#763613-v1-STEAM ELECTRIC PROPOSED SCHEDULE APRIL 22 DRAFT.docx

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PROPOSED SCHEDULING ORDER CONTENTS in *UWAG, et al. v. EPA* (5th Cir. Consolidated)

EPA files Certified Index to Administrative Record	30 days from date Court enters Scheduling Order
Due Date for any Motions* by Petitioners re: Administrative Record	14 days after Certified Index is filed
Petitioners’** Opening Briefs	75 days from judicial Resolution of any Record Motion. (“Resolution” defined as EPA compliance with any Court order on Record Motion or, if Record Motion is denied or referred to merits panel, from date Court denies or refers the Motion.)
Amicus Briefs (if any)	Per FRAP 29
EPA’s Response Brief	120 days from Opening Briefs
Intervenors’ Briefs	30 days after EPA’s Response Brief
Reply Briefs	30 days after Intervenors’ Briefs (Combined Replies to both EPA and Intervenors.)
Filing of Deferred Joint Appendix (JA)	21days after Reply Briefs
Final Briefs (with JA cites)	14 days after JA filed

RECORD MOTION

Page limits per FRAP 27. EPA’s Response to any Record Motion due 30 days after motion is filed; any Reply due 14 days thereafter.

JOINT BRIEFS

**UWAG, SWEP Co, Union-Electric, Duke Energy, and City Utilities of Springfield (“Industry Petitioners”) to file joint briefs; eNGOs (“Environmental Petitioners”) to file joint briefs; AWWA and NAWC (“AWWA”) to file joint briefs.

MERITS BRIEFS LENGTHS (word counts):

Opening Briefs of Industry and Environmental Petitioners	15,000 words each
Opening Brief of AWWA	7,500 words

Response Brief of EPA	37,500 words
Intervenor Briefs (one each by Industry and Environmental Petitioners)	7,500 words
Reply Briefs of Industry and Environmental Petitioners	7,500 words
Reply Brief of AWWA	3,750 words
Amicus Briefs	Per FRAP 29

To: Johnson, Harry M. ("Pete") [pjohnson@hunton.com]; Thomas Cmar [tcmar@earthjustice.org]; joshua.smith@sierraclub.org[joshua.smith@sierraclub.org]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; Grever, Tom (SHB)[TGREVER@shb.com]; Sullivan, Sean M.[Sean.Sullivan@troutmansanders.com]; mgerhart@earthjustice.org[mgerhart@earthjustice.org]; Sheehan, John A.[JSheehan@ClarkHill.com]
Cc: Levine, MaryEllen[levine.maryellen@epa.gov]; Zomer, Jessica[Zomer.Jessica@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Bulleit, Kristy[kbulleit@hunton.com]
From: McDermott, Martin (ENRD)
Sent: Thur 4/14/2016 5:39:58 PM
Subject: RE: Motion to Govern in Steam Electric removed.txt

Pete – just checking in to see if you will be circulating a draft extension motion soon. Thanks.
Martin

From: McDermott, Martin (ENRD)
Sent: Wednesday, April 13, 2016 2:59 PM
To: 'Johnson, Harry M. ("Pete")' <pjohnson@hunton.com>; 'Thomas Cmar' <tcmar@earthjustice.org>; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB) <TGREVER@shb.com>; Sullivan, Sean M. <Sean.Sullivan@troutmansanders.com>; mgerhart@earthjustice.org; Sheehan, John A. <JSheehan@ClarkHill.com>
Cc: Levine, MaryEllen <levine.maryellen@epa.gov>; Zomer, Jessica <Zomer.Jessica@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Bulleit, Kristy <kbulleit@hunton.com>
Subject: RE: Motion to Govern in Steam Electric

Pete – given the impending April 15 “motion to govern” filing date, I think it would be prudent to ask the court to extend that date for a week or two to allow the parties time to try to work out the issues raised by your proposal. If you agree, could you put together such a motion? I would think that all parties would concur. Martin

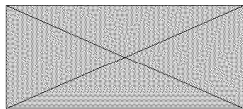
From: Johnson, Harry M. ("Pete") [mailto:pjohnson@hunton.com]
Sent: Tuesday, April 12, 2016 10:56 AM
To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>; 'Cmar, Thomas' <tcmar@nrdc.org>; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB) <TGREVER@shb.com>; Sullivan, Sean M. <Sean.Sullivan@troutmansanders.com>; mgerhart@earthjustice.org; Sheehan, John A. <JSheehan@ClarkHill.com>
Cc: Levine, MaryEllen <levine.maryellen@epa.gov>; Zomer, Jessica <Zomer.Jessica@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Bulleit, Kristy <kbulleit@hunton.com>

Subject: RE: Motion to Govern in Steam Electric

Counsel,

Here is the proposed outline for a case management order on behalf of UWAG, SWEPCo, and Union Electric. Duke Energy and City Utilities of Springfield are in agreement with it.

We look forward to your comments. Regards,



Harry M. Johnson, III

Partner

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From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]

Sent: Friday, April 01, 2016 2:56 PM

To: Johnson, Harry M. ("Pete"); Bulleit, Kristy; 'Cmar, Thomas'; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB); Sullivan, Sean M.; mgerhart@earthjustice.org; Sheehan, John A.

Cc: Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma

Subject: Motion to Govern in Steam Electric

Counsel -- Preparatory to upcoming discussions on a motion to govern, could you please advise as to your current thinking on: (1) whether you intend to file consolidated/joint briefs (I am aware that the environmental petitioners intend to file jointly); (2) desired word counts, if at variance with standard counts; and (3) how many days you might want (separate

from/irrespective of the timing of any initial motions that may be filed) to file your opening briefs, and how many days for preparation of any intervenor briefs. Thanks, Martin

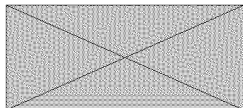
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From: Johnson, Harry M. ("Pete")
Sent: Tue 4/5/2016 9:17:01 PM
Subject: RE: Motion to Govern in Steam Electric
[removed.txt](#)

Martin,

We are working on this with our clients and will be able to respond soon. Should we set a call for early next week among the group who want to participate, or shall we exchange proposals via email?

Regards,

Pete



Harry M. Johnson, III

Partner

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rom: McDermott, Martin (ENRD) [mailto:Martin.McDermott@usdoj.gov]

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Cc: Kupchan, Simma [Kupchan.Simma@epa.gov]; Levine, MaryEllen [levine.maryellen@epa.gov]; Bulleit, Kristy [kbulleit@hunton.com]
From: McDermott, Martin (ENRD)
Sent: Wed 3/23/2016 5:39:50 PM
Subject: RE: STEAM ELECTRIC ABEYANCE MOTION
[removed.txt](#)

Pete (and others) – I am checking with EPA on the record index preparation. In the short term, I would like to get something on file to let the clerk know that the parties are working on a motion to govern. Is the draft abeyance motion acceptable? Martin

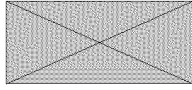
From: Johnson, Harry M. ("Pete") [mailto:pjohnson@hunton.com]
Sent: Wednesday, March 23, 2016 11:41 AM
To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>; Grever, Tom (SHB) <TGREVER@shb.com>; Thomas Cmar <tcmar@earthjustice.org>; Sheehan, John A. <JSheehan@ClarkHill.com>; casey.roberts@sierraclub.org; Sullivan, Sean M. <Sean.Sullivan@troutmansanders.com>; mgerhart@earthjustice.org
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Subject: RE: STEAM ELECTRIC ABEYANCE MOTION

Martin,

Kristy and I are discussing these issues with our clients now, and we will get back to you asap. As you know, we have issues with the public record for the rule and are likely to file a motion in that regard, so I strongly suspect we will want that issue addressed in any case management order/briefing schedule. Do you have an idea as to when you will be filing the index to the certified record?

Thanks,

Pete



Harry M. Johnson, III

Partner

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p 804.788.8784

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From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]

Sent: Tuesday, March 22, 2016 12:52 PM

To: Bulleit, Kristy; Johnson, Harry M. ("Pete"); Grever, Tom (SHB); Thomas Cmar; Sheehan, John A.; casey.roberts@sierraclub.org; Sullivan, Sean M.; mgerhart@earthjustice.org

Cc: Kupchan, Simma; Levine, MaryEllen

Subject: STEAM ELECTRIC ABEYANCE MOTION

Counsel – please advise if you consent to the attached procedural motion. The clerk is looking for this to be filed soon. Also, it would be helpful if you could send me an email letting me know (1) whether you intend to file jointly with others, and if so, with whom; (2) the date that you would propose for filing your opening brief; (3) proposed word counts for the foregoing, for any intervenor brief, and for any reply; and (4) any other matter you believe might be appropriate to include in a motion to govern. Also, if I've inadvertently left anyone off this email distribution or off the motion, please let me know. Thanks. Martin

To: McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]; Grever, Tom (SHB)[TGREVER@shb.com]; Thomas Cmar[tcmar@earthjustice.org]; Sheehan, John A.[JSheehan@ClarkHill.com]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; Sullivan, Sean M.[Sean.Sullivan@troutmansanders.com]; mgerhart@earthjustice.org[mgerhart@earthjustice.org]
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Subject: STEAM ELECTRIC ABEYANCE MOTION

Counsel – please advise if you consent to the attached procedural motion. The clerk is looking for this to be filed soon. Also, it would be helpful if you could send me an email letting me know (1) whether you intend to file jointly with others, and if so, with whom; (2) the date that you would propose for filing your opening brief; (3) proposed word counts for the foregoing, for any intervenor brief, and for any reply; and (4) any other matter you believe might be appropriate to include in a motion to govern. Also, if I've inadvertently left anyone off this email distribution or off the motion, please let me know. Thanks. Martin

To: McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]; Levine, MaryEllen[levine.maryellen@epa.gov]; Zomer, Jessica[Zomer.Jessica@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Thomas Cmar[tcmar@earthjustice.org]; 'Sheehan, John A.'[JSheehan@ClarkHill.com]; Grever, Tom (SHB)[TGREVER@shb.com]; 'Sullivan, Sean M.'[Sean.Sullivan@troutmansanders.com]; joshua.smith@sierraclub.org[joshua.smith@sierraclub.org]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; Matthew Gerhart[mgerhart@earthjustice.org]
Cc: Bulleit, Kristy[kbulleit@hunton.com]
From: Johnson, Harry M. ("Pete")
Sent: Fri 4/29/2016 5:53:32 PM
Subject: RE: STEAM ELECTRIC MOTION TO GOVERN APRIL 29, 2016 DRAFT

Martin,

One limited substantive comment, and 2 very small nits:

Substance:

1. In the Paragraph entitled "Proposed Schedule," we would modify it to add some justification for the request:

"The parties respectfully submit the following proposal for the briefing and resolution of this case and request the Court to adopt it. The parties believe this schedule is appropriate because this consolidated case encompasses seven separate petitions for review of a far-reaching rulemaking, has a voluminous record, has numerous parties with different interests, and presents many complex issues."

Nits:

-

1. In Para 2, need to add Union Electric: "Motion Regarding Completeness of Certified Index: Petitioners UWAG, Union Electric and SWEPCo intend to file a motion ("Record Motion") regarding the completeness of EPA's Certified Index...."

2. In Para 3, there is an extra hyphen in "Union-Electric" that should be removed.

Thanks,

Pete



Harry M. Johnson, III

Partner

pjohnson@hunton.com

p 804.788.8784

[bio](#) | [vCard](#)

Hunton & Williams LLP

hunton.com

From: McDermott, Martin (ENRD) [mailto:Martin.McDermott@usdoj.gov]

Sent: Friday, April 29, 2016 12:28 PM

To: Johnson, Harry M. ("Pete"); Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Thomas Cmar; 'Sheehan, John A.'; Grever, Tom (SHB); 'Sullivan, Sean M.'; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Matthew Gerhart; Bulleit, Kristy

Subject: STEAM ELECTRIC MOTION TO GOVERN APRIL 29, 2016 DRAFT

Counsel – attached is the proposed draft motion to govern. Please let me know if you have any comments, or if it is acceptable for filing. Thanks for your cooperation on getting this done. Best,
Martin

To: Wood, Robert[Wood.Robert@epa.gov]
Cc: McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]; Levine, MaryEllen[levine.maryellen@epa.gov]; McHugh, Timothy L.[TMcHugh@hunton.com]; Matuszko, Jan[Matuszko.Jan@epa.gov]; Jordan, Ronald[Jordan.Ronald@epa.gov]
From: Bulleit, Kristy
Sent: Tue 3/29/2016 12:55:36 PM
Subject: Re: NRG request for information and data regarding in SEG record regarding NRG's Conemaugh and Keystone Stations

Thanks, Rob.

Sent from my iPhone

On Mar 28, 2016, at 4:54 PM, Wood, Robert <Wood.Robert@epa.gov<mailto:Wood.Robert@epa.gov>> wrote:

Hi Kristy,

I understand Ron has talked with Steve Frank at NRG about their desire for information on Conemaugh Station and Keystone to support a possible FDF request for Conemaugh FGD. We are reviewing your information request and Ron and Steve are planning to talk again this week.

Best,

Rob

Robert K. Wood, Director
Engineering and Analysis Division
U.S. EPA Office of Water
202-566-1822

From: Bulleit, Kristy [mailto:kbulleit@hunton.com]
Sent: Monday, March 28, 2016 1:43 PM
To: Wood, Robert <Wood.Robert@epa.gov<mailto:Wood.Robert@epa.gov>>; Matuszko, Jan <Matuszko.Jan@epa.gov<mailto:Matuszko.Jan@epa.gov>>; Jordan, Ronald <Jordan.Ronald@epa.gov<mailto:Jordan.Ronald@epa.gov>>
Cc: 'McDermott, Martin (ENRD)' <Martin.McDermott@usdoj.gov<mailto:Martin.McDermott@usdoj.gov>>; Levine, MaryEllen <levine.maryellen@epa.gov<mailto:levine.maryellen@epa.gov>>; McHugh, Timothy L. <TMcHugh@hunton.com<mailto:TMcHugh@hunton.com>>; Bulleit, Kristy <kbulleit@hunton.com<mailto:kbulleit@hunton.com>>
Subject: RE: NRG request for information and data regarding in SEG record regarding NRG's Conemaugh and Keystone Stations

Rob, I'm just following up to see whether you and your staff have had a chance to review and consider this request and, if so, whether EPA will be providing the requested information.

With best regards,
Kristy

From: Bulleit, Kristy
Sent: Tuesday, March 22, 2016 2:11 PM
To: Wood, Robert K. (wood.robert@epamail.epa.gov<mailto:wood.robert@epamail.epa.gov>); Jan S. Matuszko (matuszko.jan@epa.gov<mailto:matuszko.jan@epa.gov>); jordan.ronald@epa.gov<mailto:jordan.ronald@epa.gov>
Cc: McDermott, Martin (ENRD); Levine.maryellen@epa.gov<mailto:Levine.maryellen@epa.gov>; Bulleit, Kristy; McHugh, Timothy L.

Subject: NRG request for information and data regarding in SEG record regarding NRG's Conemaugh and Keystone Stations
Importance: High

Rob, as I discussed with Martin McDermott and Mary Ellen Levine this morning, my client, NRG Energy, Inc. ("NRG") is seeking any and all portions of the record underlying the recently issued final Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category (the "ELG Rule") that relate to information from or about NRG's Conemaugh and/or Keystone Generating Stations and that have been withheld from the public rulemaking record as CBI. This request specifically includes any records produced by EPA, or others, that rely on information provided to any party by NRG or its subsidiaries.

EPA has made public much of the ELG Rule rulemaking record, but many of the records are heavily redacted on the basis that they contain confidential business information ("CBI"). Based on information that EPA has made available to the public, it is our understanding that these withheld records identify and discuss information about NRG's steam electric power generating plants that EPA considered when promulgating the ELG Rule.

NRG does not waive any CBI claims it may have at this time. Instead, NRG asks only that EPA share with it and its counsel those records or portions of records in the ELG Rule rulemaking record that contain or pertain to NRG's CBI regarding the Conemaugh and/or Keystone Generating Stations. NRG believes that this limited disclosure will be consistent with maintaining CBI claims and consents to EPA's disclosure without further analysis of that question.

Additionally, NRG expressly does not seek the disclosure of any other entities' CBI. If a record or portion of a record contains NRG's and another entity's CBI, please redact those portions of the record that contain the other entity's CBI and disclose only those portions containing NRG's CBI. In the event it is not possible to segregate NRG's CBI in this fashion, please anonymize the other entity's CBI and disclose the record.

To guide you in your search for responsive records, we have identified three documents that should be included, as described above, in your response. First is EPA's Supplemental Costs and Loadings Documentation Memorandum, EPA-HQ-OW-2009-0819-5681, with a particular emphasis on appendices A1, A2, A8, A73, A75, A76, A78, A79, and A80. Second is EPA's Incremental Costs and Pollutant Removals for the Final Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, EPA-HQ-OW-2009-0819-6472. And, third, is EPA's CBI Final Steam Electrical Technical Questionnaire Database, EPA-HQ-OW-2009-0819-6230.

I would appreciate it if you would review this request and let me know as soon as possible whether EPA will be able to supply the requested information without the need for NRG to file a FOIA request and, if so, when EPA will provide the requested information.

Many thanks in advance for your assistance with this request. I look forward to hearing from you at your earliest convenience. If you need any further information, please do not hesitate to contact me.

Best regards,
Kristy

Kristy A. N. Bulleit
Hunton & Williams LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037
Phone: 202/955-1547
Fax: 202/778-2201

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To: Wood, Robert[Wood.Robert@epa.gov]; Matuszko, Jan[Matuszko.Jan@epa.gov]; Jordan, Ronald[Jordan.Ronald@epa.gov]
Cc: 'McDermott, Martin (ENRD)'[Martin.McDermott@usdoj.gov]; Levine, MaryEllen[levine.maryellen@epa.gov]; McHugh, Timothy L.[TMcHugh@hunton.com]; Bulleit, Kristy[kbulleit@hunton.com]
From: Bulleit, Kristy
Sent: Mon 3/28/2016 5:43:24 PM
Subject: RE: NRG request for information and data regarding in SEG record regarding NRG's Conemaugh and Keystone Stations

Rob, I'm just following up to see whether you and your staff have had a chance to review and consider this request and, if so, whether EPA will be providing the requested information.

With best regards,

Kristy

From: Bulleit, Kristy
Sent: Tuesday, March 22, 2016 2:11 PM
To: Wood, Robert K. (wood.robert@epamail.epa.gov); Jan S. Matuszko (matuszko.jan@epa.gov); jordan.ronald@epa.gov
Cc: McDermott, Martin (ENRD); Levine.maryellen@epa.gov; Bulleit, Kristy; McHugh, Timothy L.
Subject: NRG request for information and data regarding in SEG record regarding NRG's Conemaugh and Keystone Stations
Importance: High

Rob, as I discussed with Martin McDermott and Mary Ellen Levine this morning, my client, NRG Energy, Inc. ("NRG") is seeking any and all portions of the record underlying the recently issued final Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category (the "ELG Rule") that relate to information from or about NRG's Conemaugh and/or Keystone Generating Stations and that have been withheld from the public rulemaking record as CBI. This request specifically includes any records produced by EPA, or others, that rely on information provided to any party by NRG or its subsidiaries.

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Additionally, NRG expressly does **not** seek the disclosure of any other entities' CBI. If a record or portion of a record contains NRG's and another entity's CBI, please redact those portions of the record that contain the other entity's CBI and disclose only those portions containing NRG's CBI. In the event it is not possible to segregate NRG's CBI in this fashion, please anonymize the other entity's CBI and disclose the record.

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Many thanks in advance for your assistance with this request. I look forward to hearing from you at your earliest convenience. If you need any further information, please do not hesitate to contact me.

Best regards,

Kristy

Kristy A. N. Bulleit
Hunton & Williams LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037

Phone: 202/955-1547
Fax: 202/778-2201

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To: Jordan, Ronald[Jordan.Ronald@epa.gov]; Zomer, Jessica[Zomer.Jessica@epa.gov]
Cc: Levine, MaryEllen[levine.maryellen@epa.gov]; Matuszko, Jan[Matuszko.Jan@epa.gov]
From: Brown, Samuel L.
Sent: Mon 10/5/2015 6:39:41 PM
Subject: ABA Water Quality and Wetlands Committee Program
[removed.txt](#)

Hi Jessica & Ron,

I hope you're well and congratulations on getting the Steam Electric ELG out the door last week! I am writing because I am a vice-chair on the ABA's Water Quality and Wetlands Committee. We're putting together the fall line-up of educational programs and the final rule came up as a potential topic.

Would you two (and/or MEL and Jan) be interested in participating in a Committee conference call sometime in October to provide an overview of the final rule? I am thinking the call would last 1 hour total—a 30-40 minute presentation of the final rule and the remainder for Q&A, or something along those lines. Myself or someone else on the Committee would likely moderate the call.

I know people would much rather hear from EPA than from industry attorneys on the final rule. Talk it over and let me know what you think or if you have questions. Obviously, if there are sensitivities at this time on certain subject matter associated with the final rule we can work around that.

Thanks! – Sam



Samuel Brown

Senior Attorney

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p 415.975.3714

f 415.975.3775

[bio](#) | [vCard](#)

Hunton & Williams LLP
575 Market St.
Suite 3700
San Francisco, CA 94105

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To: 'McDermott, Martin (ENRD)'[Martin.McDermott@usdoj.gov]; Johnson, Harry M. ("Pete") [pjohnson@hunton.com]; Levine, MaryEllen[levine.maryellen@epa.gov]; Zomer, Jessica[Zomer.Jessica@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Thomas Cmar[tcmr@earthjustice.org]; 'Sheehan, John A.'[JSheehan@ClarkHill.com]; 'Sullivan, Sean M.'[Sean.Sullivan@troutmansanders.com]; joshua.smith@sierraclub.org[joshua.smith@sierraclub.org]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; Matthew Gerhart[mgerhart@earthjustice.org]; Bulleit, Kristy[kbulleit@hunton.com]
From: Grever, Tom (SHB)
Sent: Fri 4/29/2016 6:58:34 PM
Subject: RE: STEAM ELECTRIC MOTION TO GOVERN APRIL 29, 2016 SECOND DRAFT removed.txt

Martin,

City Utilities of Springfield consents.

Thank you,

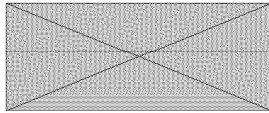
Tom

Thomas J. Grever

Partner

Shook, Hardy & Bacon L.L.P.

816.559.2375 | tgrever@shb.com



From: McDermott, Martin (ENRD) [mailto:Martin.McDermott@usdoj.gov]
Sent: Friday, April 29, 2016 1:56 PM
To: Johnson, Harry M. ("Pete"); Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Thomas Cmar; 'Sheehan, John A.'; Grever, Tom (SHB); 'Sullivan, Sean M.'; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Matthew Gerhart; Bulleit, Kristy
Subject: STEAM ELECTRIC MOTION TO GOVERN APRIL 29, 2016 SECOND DRAFT

Counsel -- Revised with Pete's comments. For those who have yet to sign off, please let me know if I may file on your behalf. Martin

Mail Gate made the following annotations on Fri Apr 29 2016 13:59:00

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for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. Thank you.

To: Grever, Tom (SHB)[TGREVER@shb.com]; 'Sullivan, Sean M.'[Sean.Sullivan@troutmansanders.com]; Johnson, Harry M. (Pete)[pjohnson@hunton.com]; McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]; Thomas Cmar[tomar@earthjustice.org]; joshua.smith@sierraclub.org[joshua.smith@sierraclub.org]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; mgerhart@earthjustice.org[mgerhart@earthjustice.org]
Cc: Levine, MaryEllen[levine.maryellen@epa.gov]; Zomer, Jessica[Zomer.Jessica@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Bulleit, Kristy[kbulleit@hunton.com]
From: Sheehan, John A.
Sent: Thur 4/14/2016 8:30:22 PM
Subject: RE: Motion to Govern in Steam Electric
[removed.txt](#)

AWWA and NAWC agree to the Joint Motion.

John

John A. Sheehan

CLARK HILL PLC

202.572.8665 (direct) | 202.572.8687 (fax) | 301.980.5032 (cell)
jshieehan@clarkhill.com | www.clarkhill.com

From: Grever, Tom (SHB) [mailto:TGREVER@shb.com]
Sent: Thursday, April 14, 2016 4:10 PM
To: 'Sullivan, Sean M.'; Johnson, Harry M. (Pete); McDermott, Martin (ENRD); Thomas Cmar; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; mgerhart@earthjustice.org; Sheehan, John A.
Cc: Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Bulleit, Kristy
Subject: RE: Motion to Govern in Steam Electric

We agree. Thanks,

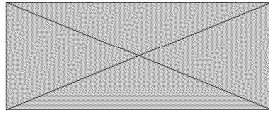
Tom

Thomas J. Grever

Partner

Shook, Hardy & Bacon L.L.P.

816.559.2375 | tgrever@shb.com



From: Sullivan, Sean M. [<mailto:Sean.Sullivan@troutmansanders.com>]
Sent: Thursday, April 14, 2016 3:02 PM
To: Johnson, Harry M. (Pete); McDermott, Martin (ENRD); Thomas Cmar; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB); mgerhart@earthjustice.org; Sheehan, John A.
Cc: Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Bulleit, Kristy
Subject: RE: Motion to Govern in Steam Electric

Looks good to me, too.

Sean

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Johnson, Harry M. (Pete)" <pjohnson@hunton.com>
Date: 04/14/2016 3:14 PM (GMT-05:00)
To: "McDermott, Martin (ENRD)" <Martin.McDermott@usdoj.gov>, Thomas Cmar <tcmar@earthjustice.org>, joshua.smith@sierraclub.org, casey.roberts@sierraclub.org, "Grever, Tom (SHB)" <TGREVER@shb.com>, "Sullivan, Sean M." <Sean.Sullivan@troutmansanders.com>, mgerhart@earthjustice.org, "Sheehan, John A." <JSheehan@ClarkHill.com>
Cc: "Levine, MaryEllen" <levine.maryellen@epa.gov>, "Zomer, Jessica" <Zomer.Jessica@epa.gov>, "Kupchan, Simma" <Kupchan.Simma@epa.gov>, "Bulleit, Kristy" <kbulleit@hunton.com>
Subject: RE: Motion to Govern in Steam Electric

Counsel,

Here is a draft motion for your consideration. It would extend the deadline for 2 weeks until 4/29 to submit a joint motion for an order governing the proceedings.

Martin, it is set up for your signature as with the last one – is that OK?

Regards,



Harry M. Johnson, III

Partner

pjohnson@hunton.com

p 804.788.8784

[bio](#) | [vCard](#)

Hunton & Williams LLP

hunton.com

From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]

Sent: Wednesday, April 13, 2016 2:59 PM

To: Johnson, Harry M. ("Pete"); Thomas Cmar; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB); Sullivan, Sean M.; mgerhart@earthjustice.org; Sheehan, John A.

Cc: Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Bulleit, Kristy

Subject: RE: Motion to Govern in Steam Electric

Pete – given the impending April 15 “motion to govern” filing date, I think it would be prudent to ask the court to extend that date for a week or two to allow the parties time to try to work out the issues raised by your proposal. If you agree, could you put together such a motion? I would think that all parties would concur. Martin

From: Johnson, Harry M. ("Pete") [<mailto:pjohnson@hunton.com>]

Sent: Tuesday, April 12, 2016 10:56 AM

To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>; 'Cmar, Thomas' <tcmar@nrdc.org>; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB) <TGREVER@shb.com>; Sullivan, Sean M. <Sean.Sullivan@troutmansanders.com>; mgerhart@earthjustice.org; Sheehan, John A. <JSheehan@ClarkHill.com>

Cc: Levine, MaryEllen <levine.maryellen@epa.gov>; Zomer, Jessica <Zomer.Jessica@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Bulleit, Kristy <kbulleit@hunton.com>

Subject: RE: Motion to Govern in Steam Electric

Counsel,

Here is the proposed outline for a case management order on behalf of UWAG, SWEPCo, and Union Electric. Duke Energy and City Utilities of Springfield are in agreement with it.

We look forward to your comments. Regards,



Harry M. Johnson, III

Partner

pjohnson@hunton.com

p 804.788.8784

[bio](#) | [vCard](#)

Hunton & Williams LLP

hunton.com

From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]

Sent: Friday, April 01, 2016 2:56 PM

To: Johnson, Harry M. ("Pete"); Bulleit, Kristy; 'Cmar, Thomas'; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB); Sullivan, Sean M.; mgerhart@earthjustice.org; Sheehan, John A.

Cc: Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma

Subject: Motion to Govern in Steam Electric

Counsel -- Preparatory to upcoming discussions on a motion to govern, could you please advise as to your current thinking on: (1) whether you intend to file consolidated/joint briefs (I am aware that the environmental petitioners intend to file jointly); (2) desired word counts, if at variance with standard counts; and (3) how many days you might want (separate from/irrespective of the timing of any initial motions that may be filed) to file your opening briefs, and how many days for preparation of any intervenor briefs. Thanks, Martin

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Mail Gate made the following annotations on Thu Apr 14 2016 15:11:02

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To: McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]; 'Cmar, Thomas'[tcmar@nrdc.org]; joshua.smith@sierraclub.org[joshua.smith@sierraclub.org]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; Grever, Tom (SHB)[TGREVER@shb.com]; Sullivan, Sean M.[Sean.Sullivan@troutmansanders.com]; mgerhart@earthjustice.org[mgerhart@earthjustice.org]; Sheehan, John A.[JSheehan@ClarkHill.com]
Cc: Levine, MaryEllen[levine.maryellen@epa.gov]; Zomer, Jessica[Zomer.Jessica@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Bulleit, Kristy[kbulleit@hunton.com]
From: Johnson, Harry M. ("Pete")
Sent: Tue 4/12/2016 2:55:55 PM
Subject: RE: Motion to Govern in Steam Electric
[Proposed Scheduling Order Contents \(for all counsel\) 60114361 1.DOCX](#)

Counsel,

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We look forward to your comments. Regards,



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Partner

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[bio](#) | [vCard](#)

Hunton & Williams LLP

hunton.com

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To: Johnson, Harry M. ("Pete"); Bulleit, Kristy; 'Cmar, Thomas'; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB); Sullivan, Sean M.; mgerhart@earthjustice.org; Sheehan, John A.
Cc: Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma
Subject: Motion to Govern in Steam Electric

Counsel -- Preparatory to upcoming discussions on a motion to govern, could you please advise as to your current thinking on: (1) whether you intend to file consolidated/joint briefs (I am aware that the environmental petitioners intend to file jointly); (2) desired word counts, if at variance with standard counts; and (3) how many days you might want (separate from/irrespective of the timing of any initial motions that may be filed) to file your opening briefs, and how many days for preparation of any intervenor briefs. Thanks, Martin

PROPOSED SCHEDULING ORDER CONTENTS

UWAG, et al. v. EPA (5th Cir. Consolidated)

- | | | |
|--|----------------------------------|---|
| * EPA file Certified Index to Record | 30 days? | Gov't will need to weigh in here. |
| * Motions re Record | 14 days after Index | Need to know whether Gov't expects any additional changes to public record on Regs.Gov. If so, need more time to prepare motions. |
| * Petitioners' Opening Briefs
any order
order. | 75 days from motion resolution | "Resolution" defined as Gov't compliance with on motions. If denied, deadline runs from date of |
| * Amicus briefs | Per FRAP 29 | |
| * EPA Response Briefs | 75 days from opening | |
| * Intervenor's Briefs | 30 days after EPA brief | Intervenors need to consider EPA response. |
| * Reply Briefs | 30 days from Intervenor's briefs | Combined replies to both EPA and Intervenor's. |
| * Filing Deferred Appendix | 20 days after Reply Briefs | |

- ° UWAG, SWEPCo, Union-Electric, Duke Energy, and City Utilities of Springfield file joint briefs
- ° eNGOs file joint briefs
- ° AWWA and NAWC file joint briefs

BRIEF LENGTHS:

Opening and Response	35,000 words (roughly 75 pages)	[2.5 x FRAP default]
Intervenor's Brief	17,500 words (roughly 37.5 pages)	

Reply Brief

17,500 words (roughly 37.5 pages) [2.5 x FRAP default]

To: 'Johnson, Harry M. ("Pete")'[pjohnson@hunton.com]; McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]; Levine, MaryEllen[levine.maryellen@epa.gov]; Zomer, Jessica[Zomer.Jessica@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Thomas Cmar[tcmar@earthjustice.org]; 'Sheehan, John A.'[JSheehan@ClarkHill.com]; Grever, Tom (SHB)[TGREVER@shb.com]; joshua.smith@sierraclub.org[joshua.smith@sierraclub.org]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; Matthew Gerhart[mgerhart@earthjustice.org]
Cc: Bulleit, Kristy[kbulleit@hunton.com]
From: Sullivan, Sean M.
Sent: Fri 4/29/2016 6:14:08 PM
Subject: RE: STEAM ELECTRIC MOTION TO GOVERN APRIL 29, 2016 DRAFT removed.txt

All –

Subject to Pete's comments below, Duke Energy Indiana consents to the motion.

Sean M. Sullivan

Troutman Sanders LLP

434 Fayetteville Street, Suite 1900

Raleigh, NC 27601

Office: (919) 835-4173

Cell: **Ex. 6 - Personal Privacy**

sean.sullivan@troutmansanders.com

From: Johnson, Harry M. ("Pete") [mailto:pjohnson@hunton.com]

Sent: Friday, April 29, 2016 1:54 PM

To: McDermott, Martin (ENRD); Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Thomas Cmar;

'Sheehan, John A.'; Grever, Tom (SHB); Sullivan, Sean M.; joshua.smith@sierraclub.org;
casey.roberts@sierraclub.org; Matthew Gerhart
Cc: Bulleit, Kristy
Subject: RE: STEAM ELECTRIC MOTION TO GOVERN APRIL 29, 2016 DRAFT

Martin,

One limited substantive comment, and 2 very small nits:

Substance:

1. In the Paragraph entitled "Proposed Schedule," we would modify it to add some justification for the request:

"The parties respectfully submit the following proposal for the briefing and resolution of this case and request the Court to adopt it. The parties believe this schedule is appropriate because this consolidated case encompasses seven separate petitions for review of a far-reaching rulemaking, has a voluminous record, has numerous parties with different interests, and presents many complex issues."

Nits:

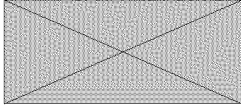
-

1. In Para 2, need to add Union Electric: "Motion Regarding Completeness of Certified Index: Petitioners UWAG, Union Electric and SWEPCo intend to file a motion ("Record Motion") regarding the completeness of EPA's Certified Index...."

2. In Para 3, there is an extra hyphen in "Union-Electric" that should be removed.

Thanks,

Pete



Harry M. Johnson, III

Partner

pjohnson@hunton.com

p 804.788.8784

[bio](#) | [vCard](#)

Hunton & Williams LLP

hunton.com

From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]

Sent: Friday, April 29, 2016 12:28 PM

To: Johnson, Harry M. ("Pete"); Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Thomas Cmar; 'Sheehan, John A.'; Grever, Tom (SHB); 'Sullivan, Sean M.'; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Matthew Gerhart; Bulleit, Kristy

Subject: STEAM ELECTRIC MOTION TO GOVERN APRIL 29, 2016 DRAFT

Counsel – attached is the proposed draft motion to govern. Please let me know if you have any comments, or if it is acceptable for filing. Thanks for your cooperation on getting this done. Best,
Martin

This e-mail communication (including any attachments) may contain legally privileged and confidential information intended solely for the use of the intended recipient. If you are not the intended recipient, you should immediately stop reading this message and delete it from your system. Any unauthorized reading, distribution, copying or other use of this communication (or its attachments) is strictly prohibited.

To: 'Sullivan, Sean M.'[Sean.Sullivan@troutmansanders.com]; Johnson, Harry M. (Pete)[pjohnson@hunton.com]; McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]; Thomas Cmar[tcmar@earthjustice.org]; joshua.smith@sierraclub.org[joshua.smith@sierraclub.org]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; mgerhart@earthjustice.org[mgerhart@earthjustice.org]; Sheehan, John A.[JSheehan@ClarkHill.com]
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From: Grever, Tom (SHB)
Sent: Thur 4/14/2016 8:10:25 PM
Subject: RE: Motion to Govern in Steam Electric

We agree. Thanks,

Tom

Thomas J. Grever
Partner
Shook, Hardy & Bacon L.L.P.

816.559.2375 | tgrever@shb.com



From: Sullivan, Sean M. [mailto:Sean.Sullivan@troutmansanders.com]
Sent: Thursday, April 14, 2016 3:02 PM
To: Johnson, Harry M. (Pete); McDermott, Martin (ENRD); Thomas Cmar; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB); mgerhart@earthjustice.org; Sheehan, John A.
Cc: Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Bulleit, Kristy
Subject: RE: Motion to Govern in Steam Electric

Looks good to me, too.

Sean

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Johnson, Harry M. (Pete)" <pjohnson@hunton.com>

Date: 04/14/2016 3:14 PM (GMT-05:00)

To: "McDermott, Martin (ENRD)" <Martin.McDermott@usdoj.gov>, Thomas Cmar <tcmar@earthjustice.org>, joshua.smith@sierraclub.org, casey.roberts@sierraclub.org, "Grever, Tom (SHB)" <TGREVER@shb.com>, "Sullivan, Sean M." <Sean.Sullivan@troutmansanders.com>, mgerhart@earthjustice.org, "Sheehan, John A." <JSheehan@ClarkHill.com>

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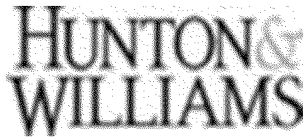
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From: Johnson, Harry M. ("Pete") [<mailto:pjohnson@hunton.com>]
Sent: Tuesday, April 12, 2016 10:56 AM
To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>; 'Cmar, Thomas' <tcmar@nrdc.org>; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB) <TGREVER@shb.com>; Sullivan, Sean M. <Sean.Sullivan@troutmansanders.com>; mgerhart@earthjustice.org; Sheehan, John A. <JSheehan@ClarkHill.com>
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Mail Gate made the following annotations on Thu Apr 14 2016 15:11:02

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From: Johnson, Harry M. ("Pete")
Sent: Thur 4/14/2016 7:13:41 PM
Subject: RE: Motion to Govern in Steam Electric
[Second Joint Motion to Hold in Abeyance 60145112 2.DOCX](#)

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hunton.com

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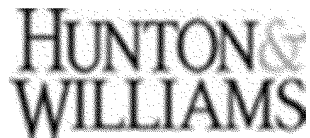
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Partner

pjohnson@hunton.com

p

[bio](#) | [vCard](#)

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 15-60821

SOUTHWESTERN ELECTRIC POWER COMPANY, et al.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.,
Respondents.

Petitions for Review of a Final Rule issued by the
United States Environmental Protection Agency

**SECOND JOINT MOTION TO HOLD CONSOLIDATED CASES IN
FURTHER ABEYANCE PENDING SUBMISSION OF MOTION
TO GOVERN FURTHER PROCEEDINGS**

Petitioners and Respondents in these seven consolidated cases hereby jointly move the Court to continue to hold these consolidated cases in abeyance for an additional two weeks pending the parties' submission of a motion to govern further proceedings. In support hereof, the parties state the following:

1. On January 8, 2016, Respondent EPA, together with Petitioners and Intervenors in the original four consolidated cases, moved for an order holding the cases in abeyance and staying all proceedings therein – including any deadlines for filing the administrative record, appendix, and merits briefs – until after the expiration of the 120-day statutory deadline (March 16, 2016) for filing judicial challenges to the rule at issue: “Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category” (“the Challenged Rule” or “Rule”). 80 Fed. Reg. 67,838 (Nov. 3, 2015). The Court granted that abeyance motion on

January 15, 2016.

2. On March 29, 2016, Respondent EPA, together with Petitioners and Intervenors in the original and subsequent consolidated cases, moved for an order holding the cases in further abeyance and staying all proceedings therein, until such time as the parties could craft a joint motion to govern further proceedings, addressing the parties' proposals for: (1) the date for EPA to file the certified index to the administrative record, which is voluminous; (2) the consolidation of briefing by the parties, to minimize the burden on the Court; (3) the filing and resolution of any motions regarding the completeness of the record; (4) the dates for the filing of the parties' proof briefs, the joint deferred appendix, and the final briefs; (5) word counts for briefs; and (6) such other matters as may be necessary or appropriate under the circumstances. The Court granted that abeyance motion on March 30, 2016.

4. The parties have been diligently discussing a joint motion to govern further proceedings, but, as there are many parties in these consolidated cases, a final agreement has not yet been reached. However, with leave from the Court, the parties believe they will reach an agreement soon and be in a position to submit a joint motion by April 29, 2016.

5. As such, the parties request that the Court issue an order setting April 29, 2016 as the new filing date for a joint motion to govern further proceedings.

Dated: April 15, 2016

Respectfully submitted by:

/s/ Martin F. McDermott

Martin F. McDermott

United States Department of Justice

Environment & Natural Resources Division

Environmental Defense Section

601 D Street, N.W., Suite 8000

Washington, D.C. 20004

202-514-4122 (tel)

martin.mcdermott@usdoj.gov

Counsel for Respondent EPA

/s/ Kristy A.N. Bulleit

Kristy A.N. Bulleit
Hunton & Williams LLP
2200 Pennsylvania Avenue, N.W.
Washington, D.C. 20037-1709
202-955-1547 (tel.)
kbulleit@hunton.com

*Counsel for Petitioner/Intervenor Utility Water Act
Group and Southwestern Electric Power Company*

/s/ Harry M. Johnson, III

Harry M. Johnson, III
Hunton & Williams LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219-4074
804-788-8200 (tel.)
pjohnson@hunton.co

*Counsel for Petitioner/Intervenor Utility Water Act
Group and Union Electric Company*

/s/ Thomas J. Cmar

Thomas J. Cmar
Earthjustice
1101 Lake Street, Suite 405B
Oak Park, IL 60301
312-257-9338 (tel.)
tcmar@earthjustice.org

*Counsel for Petitioners Environmental Integrity
Project and Waterkeeper Alliance, Inc., and for
Intervenor Clean Water Action*

/s/ Matthew Gerhart

Matthew Gerhart
Earthjustice
705 Second Ave., Suite 203
Seattle, WA 98104
206-343-7340 (tel.)
mgerhart@earthjustice.org

*Counsel for Petitioners Waterkeeper Alliance, Inc.
and Environmental Integrity Project, and for
Intervenor Clean Water Action*

/s/ Casey Roberts
Casey Roberts
Sierra Club
85 Second Street, Second Floor
San Francisco, CA 94105-3441
415-977-5710 (tel.)
casey.roberts@sierraclub.org
Counsel for Petitioner/Intervenor Sierra Club

/s/ Thomas J. Grever
Thomas J. Grever
Shook, Hardy & Bacon, L.L.P.
2555 Grand Boulevard
Kansas City, MO 64108-2613
816-559-2375 (tel.)
tgrever@shb.com
*Counsel for Petitioner City of Springfield, Missouri,
by and through the Board of Public Utilities*

/s/ John A. Sheehan
John A. Sheehan
Clark Hill PLC
601 Pennsylvania Ave., NW
Suite 1000
Washington, D.C. 20004
202-572-8665 (tel.)
jsheehan@clarkhill.com
*Counsel for American Water Works Association
and National Association of Water Companies*

/s/ Sean M. Sullivan
Sean M. Sullivan
Troutman Sanders LLP
434 Fayetteville Street, Suite 1900
Raleigh, NC 27601
919-835-4173 (tel.)
sean.sullivan@troutmansanders.com
Counsel for Petitioner Duke Energy Indiana, Inc.

CERTIFICATE OF SERVICE

I certify that on April 15, 2016, a true and correct copy of the foregoing **SECOND JOINT MOTION TO HOLD CONSOLIDATED CASES IN FURTHER ABEYANCE PENDING SUBMISSION OF MOTION TO GOVERN FURTHER PROCEEDINGS** was filed through the Court's ECF system, and thereby served on all counsel of record for Petitioners in the consolidated cases.

/s/ Martin F. McDermott
Martin F. McDermott
Attorney for Respondents

To: McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]; Thomas Cmar[tcmar@earthjustice.org]; joshua.smith@sierraclub.org[joshua.smith@sierraclub.org]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; Grever, Tom (SHB)[TGREVER@shb.com]; Sullivan, Sean M.[Sean.Sullivan@troutmansanders.com]; mgerhart@earthjustice.org[mgerhart@earthjustice.org]; Sheehan, John A.[JSheehan@ClarkHill.com]
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From: Johnson, Harry M. ("Pete")
Sent: Thur 4/14/2016 5:48:01 PM
Subject: RE: Motion to Govern in Steam Electric
[removed.txt](#)

Yes, I expect to circulate it in about an hour.

Pete

From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]
Sent: Thursday, April 14, 2016 1:40 PM
To: Johnson, Harry M. ("Pete"); Thomas Cmar; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB); Sullivan, Sean M.; mgerhart@earthjustice.org; Sheehan, John A.
Cc: Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Bulleit, Kristy
Subject: RE: Motion to Govern in Steam Electric

Pete – just checking in to see if you will be circulating a draft extension motion soon. Thanks.
Martin

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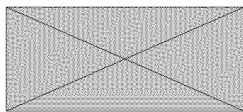
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Harry M. Johnson, III

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Hunton & Williams LLP

hunton.com

From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]
Sent: Friday, April 01, 2016 2:56 PM
To: Johnson, Harry M. ("Pete"); Bulleit, Kristy; 'Cmar, Thomas'; joshua.smith@sierraclub.org;
casey.roberts@sierraclub.org; Grever, Tom (SHB); Sullivan, Sean M.; mgerhart@earthjustice.org;
Sheehan, John A.
Cc: Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma
Subject: Motion to Govern in Steam Electric

Counsel -- Preparatory to upcoming discussions on a motion to govern, could you please advise as to your current thinking on: (1) whether you intend to file consolidated/joint briefs (I am aware that the environmental petitioners intend to file jointly); (2) desired word counts, if at variance with standard counts; and (3) how many days you might want (separate from/irrespective of the timing of any initial motions that may be filed) to file your opening briefs, and how many days for preparation of any intervenor briefs. Thanks, Martin

To: Johnson, Harry M. ("Pete") [pjohnson@hunton.com]; Thomas Cmar [tcmar@earthjustice.org]; joshua.smith@sierraclub.org[joshua.smith@sierraclub.org]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; Grever, Tom (SHB) [TGREVER@shb.com]; Sullivan, Sean M. [Sean.Sullivan@troutmansanders.com]; mgerhart@earthjustice.org[mgerhart@earthjustice.org]; Sheehan, John A. [JSheehan@ClarkHill.com]
Cc: Levine, MaryEllen [levine.maryellen@epa.gov]; Zomer, Jessica [Zomer.Jessica@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Bulleit, Kristy [kbulleit@hunton.com]
From: McDermott, Martin (ENRD)
Sent: Wed 4/13/2016 6:59:29 PM
Subject: RE: Motion to Govern in Steam Electric removed.txt

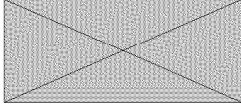
Pete – given the impending April 15 “motion to govern” filing date, I think it would be prudent to ask the court to extend that date for a week or two to allow the parties time to try to work out the issues raised by your proposal. If you agree, could you put together such a motion? I would think that all parties would concur. Martin

From: Johnson, Harry M. ("Pete") [mailto:pjohnson@hunton.com]
Sent: Tuesday, April 12, 2016 10:56 AM
To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>; 'Cmar, Thomas' <tcmar@nrdc.org>; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB) <TGREVER@shb.com>; Sullivan, Sean M. <Sean.Sullivan@troutmansanders.com>; mgerhart@earthjustice.org; Sheehan, John A. <JSheehan@ClarkHill.com>
Cc: Levine, MaryEllen <levine.maryellen@epa.gov>; Zomer, Jessica <Zomer.Jessica@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Bulleit, Kristy <kbulleit@hunton.com>
Subject: RE: Motion to Govern in Steam Electric

Counsel,

Here is the proposed outline for a case management order on behalf of UWAG, SWEPCo, and Union Electric. Duke Energy and City Utilities of Springfield are in agreement with it.

We look forward to your comments. Regards,



Harry M. Johnson, III

p 804.788.8784

[bio](#) | [vCard](#)

Hunton & Williams LLP

hunton.com

From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]

Sent: Friday, April 01, 2016 2:56 PM

To: Johnson, Harry M. ("Pete"); Bulleit, Kristy; 'Cmar, Thomas'; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB); Sullivan, Sean M.; mgerhart@earthjustice.org; Sheehan, John A.

Cc: Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma

Subject: Motion to Govern in Steam Electric

Counsel -- Preparatory to upcoming discussions on a motion to govern, could you please advise as to your current thinking on: (1) whether you intend to file consolidated/joint briefs (I am aware that the environmental petitioners intend to file jointly); (2) desired word counts, if at variance with standard counts; and (3) how many days you might want (separate from/irrespective of the timing of any initial motions that may be filed) to file your opening briefs, and how many days for preparation of any intervenor briefs. Thanks, Martin

To: Thomas Cmar[tcmarr@earthjustice.org]; McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]
Cc: Matthew Gerhart[mgerhart@earthjustice.org]; Casey Roberts (casey.roberts@sierraclub.org)[casey.roberts@sierraclub.org]; Bulleit, Kristy[kbulleit@hunton.com]; Levine, MaryEllen[levine.maryellen@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]
From: Johnson, Harry M. ("Pete")
Sent: Mon 1/4/2016 10:22:22 PM
Subject: RE: Steam Electric 120-filing motion

Small technical point -- Shouldn't Intervenor CWA be listed somewhere as a party that also consents to the motion?

Harry M. ("Pete") Johnson, III
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
Phone: (804) 788-8784
Fax: (804) 343-4538
eMail: pjohnson@hunton.com
website: www.hunton.com

-----Original Message-----

From: Thomas Cmar [mailto:tcmarr@earthjustice.org]
Sent: Monday, January 04, 2016 5:16 PM
To: McDermott, Martin (ENRD)
Cc: Johnson, Harry M. ("Pete"); Matthew Gerhart; Casey Roberts (casey.roberts@sierraclub.org); Bulleit, Kristy; Levine, MaryEllen; Kupchan.Simma@epa.gov
Subject: Re: Steam Electric 120-filing motion

Hi Martin,

Thanks for drafting this. It looks good to Environmental Petitioners.

Best,

Thom

Sent from my iPhone

On Jan 4, 2016, at 3:11 PM, McDermott, Martin (ENRD)
<Martin.McDermott@usdoj.gov<mailto:Martin.McDermott@usdoj.gov>> wrote:

Counsel – please let me know if the attached meets with your approval. Thanks. Martin <ENV_DEFENSE-#751496-v1-STEAM_ELECTRIC_DRAFT_STAY_MOTION_JAN__2016.docx>

To: Johnson, Harry M. ("Pete") [pjohnson@hunton.com];
mgerhart@earthjustice.org [mgerhart@earthjustice.org]; Casey Roberts
(casey.roberts@sierraclub.org) [casey.roberts@sierraclub.org];
kbulleit@hunton.com [kbulleit@hunton.com]; tcmar@earthjustice.org [tcmar@earthjustice.org]
Cc: Levine, MaryEllen [levine.maryellen@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]
From: McDermott, Martin (ENRD)
Sent: Mon 1/4/2016 9:10:57 PM
Subject: Steam Electric 120-filing motion
ENV DEFENSE-#751496-v1-STEAM ELECTRIC DRAFT STAY MOTION JAN 2016.docx

Counsel – please let me know if the attached meets with your approval. Thanks. Martin

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 15-60821

SOUTHWESTERN ELECTRIC POWER COMPANY; UTILITY WATER ACT
GROUP; UNION ELECTRIC COMPANY, doing business as Ameren
Missouri; WATERKEEPER ALLIANCE, INCORPORATED;
ENVIRONMENTAL INTEGRITY PROJECT; SIERRA CLUB,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; GINA
MCCARTHY, in her official capacity as Administrator of the United States
Environmental Protection Agency,

Respondents.

Petitions for Review of a Final Rule issued by the
United States Environmental Protection Agency

**JOINT MOTION TO HOLD CONSOLIDATED CASES IN ABEYANCE UNTIL AFTER
STATUTORY DEADLINE FOR FILING PETITIONS FOR REVIEW HAS PASSED**

Pursuant to Federal Rule of Appellate Procedure 27 and Circuit Rule 27, Respondent
United States Environmental Protection Agency (“EPA”) and all Petitioners in these four
consolidated cases jointly move for an order holding the cases in abeyance and staying all
proceedings therein – including any deadlines for filing the administrative record, appendix, and
merits briefs – until after the 120-day statutory deadline for filing judicial challenges to the rule
at issue has expired. In support hereof, the parties state the following:

1. This action, the lead case of which was filed in this Court on November 20, 2015,
presently involves four consolidated petitions for review filed pursuant to section 509(b)(1) of
the Federal Water Pollution Control Act (hereinafter the “Clean Water Act” or “CWA”), 33

U.S.C. § 1369(b)(1), challenging EPA’s final rule entitled “Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category” (“the Challenged Rule” or “Rule”). 80 Fed. Reg. 67,838 (Nov. 3, 2015).

2. EPA filed a notice with the Judicial Panel on Multidistrict Litigation, informing the Panel that the four petitions seeking review of the same EPA rule had been filed in four different circuit courts of appeal. On December 8, 2015, final venue for the four petitions (and for any subsequently filed petitions) was assigned to this Court pursuant to a Consolidation Order issued by the Judicial Panel on Multidistrict Litigation following its random selection procedures.

3. Under CWA section 509(b)(1), interested parties have 120 days to file such petitions for review, beginning with the rule’s effective date for judicial review purposes, here November 17, 2015. *See* 33 U.S.C. § 1369(b)(1) (“Any such application [for judicial review] shall be made within 120 days from the date of such . . . issuance. . . .”); 40 C.F.R. § 23.2.

4. For the Challenged Rule, the 120-day period to file petitions for review will run on March 16, 2016. The parties request that the Court stay these proceedings through such date to ensure that procedural deadlines in this matter are extended until after the conclusion of the statutory filing period. The parties further propose that they (and any subsequent parties to this litigation) be ordered to file a joint motion to govern further proceedings within 21 days after such date, i.e., by April 6, 2016.

Dated: January __, 2016

Respectfully submitted by:

/s/ Martin F. McDermott

Martin F. McDermott

United States Department of Justice

Environment & Natural Resources Division

Environmental Defense Section

601 D Street, N.W., Suite 8000

Washington, D.C. 20004

202-514-4122 (tel)

martin.mcdermott@usdoj.gov

Counsel for Respondent EPA

/s/ Kristy A.N. Bulleit

Kristy A.N. Bulleit

Hunton & Williams LLP

2200 Pennsylvania Avenue, N.W.

Washington, D.C. 20037-1709

202-955-1547 (tel.)

kbulleit@hunton.com

*Counsel for Petitioners Utility Water Act Group
and Southwestern Electric Power Company*

/s/ Harry M. Johnson, III

Harry M. Johnson, III

Hunton & Williams LLP

Riverfront Plaza, East Tower

951 East Byrd Street

Richmond, VA 23219-4074

804-788-8200 (tel.)

pjohnson@hunton.co

*Counsel for Petitioners Utility Water Act Group
and Union Electric Company*

/s/ Thomas J. Cmar

Thomas J. Cmar

Earthjustice

1101 Lake Street, Suite 405B

Oak Park, IL 60301

312-257-9338 (tel.)

tcmar@earthjustice.org

*Counsel for Petitioners Environmental Integrity
Project and Waterkeeper Alliance, Inc.*

/s/ Matthew Gerhart

Matthew Gerhart

Earthjustice

705 Second Ave., Suite 203

Seattle, WA 98104

206-343-7340 (tel.)

mgerhart@earthjustice.org

*Counsel for Petitioners Waterkeeper Alliance, Inc.
and Environmental Integrity Project*

/s/ Casey Roberts

Casey Roberts

Sierra Club

85 Second Street, Second Floor
San Francisco, CA 94105-3441
415-977-5710 (tel.)
casey.roberts@sierraclub.org
Counsel for Petitioner Sierra Club

CERTIFICATE OF SERVICE

I certify that on January __, 2016, a true and correct copy of the foregoing **JOINT MOTION TO HOLD CONSOLIDATED CASES IN ABEYANCE UNTIL AFTER THE STATUTORY DEADLINE FOR FILING PETITIONS FOR REVIEW HAS PASSED** was filed through the Court's ECF system, and thereby served on all counsel of record for Petitioners in the consolidated cases.

/s/ Martin F. McDermott
Martin F. McDermott
Attorney for Respondents

To: Casey Roberts (casey.roberts@sierraclub.org)[casey.roberts@sierraclub.org]; kbulleit@hunton.com[kbulleit@hunton.com]; Johnson, Harry M. ("Pete")[pjohnson@hunton.com]; McHugh, Timothy L.[TMcHugh@hunton.com]; joshua.smith@sierraclub.org[joshua.smith@sierraclub.org]; mgerhart@earthjustice.org[mgerhart@earthjustice.org]; tcmar@earthjustice.org[tcmar@earthjustice.org]; andrea.issod@sierraclub.org[andrea.issod@sierraclub.org]
Cc: Zomer, Jessica[Zomer.Jessica@epa.gov]; Levine, MaryEllen[levine.maryellen@epa.gov]
From: McDermott, Martin (ENRD)
Sent: Wed 12/30/2015 10:11:40 PM
Subject: Steam Electric litigation

Counsel – now that intervention has been granted, I suggest that the parties enter into a joint motion to have this matter held in abeyance for the duration of the 120-day petition-filing period, with the parties to file a motion to govern further proceedings within 30 days thereafter. I would be happy to circulate a draft of such a motion, if not this week then early next. Does this approach meet with your approval? (Please let me know if I neglected to copy anyone on this email.) Thanks. Martin

To: Levine, MaryEllen[levine.maryellen@epa.gov]
From: Bulleit, Kristy
Sent: Thur 12/10/2015 8:23:44 PM
Subject: Re: Steam Electric petitions for review.

Thanks so much, Mary Ellen.

On a wholly separate note, is there any chance I could persuade you to participate in the next iteration of the ALI CWA Advances Course, which we're planning for May, 2016? I was hoping you might talk about NPDES issues, and I'd be happy to give you the details.

All the best,
Kristy

Sent from my iPhone

On Dec 7, 2015, at 10:44 AM, Levine, MaryEllen
<levine.maryellen@epa.gov<mailto:levine.maryellen@epa.gov>> wrote:

Hi Kristy, I just received your voicemail.
Martin McDermott is our DoJ attorney on the steam electric petitions for review.

- Mary Ellen

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
(202) 564-5487

To: Wood, Robert[Wood.Robert@epa.gov]; Matuszko, Jan[Matuszko.Jan@epa.gov]; Jordan, Ronald[Jordan.Ronald@epa.gov]
Cc: McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]; Levine, MaryEllen[levine.maryellen@epa.gov]; Bulleit, Kristy[kbulleit@hunton.com]; McHugh, Timothy L.[TMcHugh@hunton.com]
From: Bulleit, Kristy
Sent: Tue 3/22/2016 6:10:48 PM
Subject: NRG request for information and data regarding in SEG record regarding NRG's Conemaugh and Keystone Stations

Rob, as I discussed with Martin McDermott and Mary Ellen Levine this morning, my client, NRG Energy, Inc. ("NRG") is seeking any and all portions of the record underlying the recently issued final Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category (the "ELG Rule") that relate to information from or about NRG's Conemaugh and/or Keystone Generating Stations and that have been withheld from the public rulemaking record as CBI. This request specifically includes any records produced by EPA, or others, that rely on information provided to any party by NRG or its subsidiaries.

EPA has made public much of the ELG Rule rulemaking record, but many of the records are heavily redacted on the basis that they contain confidential business information ("CBI"). Based on information that EPA has made available to the public, it is our understanding that these withheld records identify and discuss information about NRG's steam electric power generating plants that EPA considered when promulgating the ELG Rule.

NRG does not waive any CBI claims it may have at this time. Instead, NRG asks only that EPA share with it and its counsel those records or portions of records in the ELG Rule rulemaking record that contain or pertain to NRG's CBI regarding the Conemaugh and/or Keystone Generating Stations. NRG believes that this limited disclosure will be consistent with maintaining CBI claims and consents to EPA's disclosure without further analysis of that question.

Additionally, NRG expressly does **not** seek the disclosure of any other entities' CBI. If a record or portion of a record contains NRG's and another entity's CBI, please redact those portions of the record that contain the other entity's CBI and disclose only those portions containing NRG's CBI. In the event it is not possible to segregate NRG's CBI in this fashion, please anonymize the other entity's CBI and disclose the record.

To guide you in your search for responsive records, we have identified three documents that should be included, as described above, in your response. First is EPA's Supplemental Costs and Loadings Documentation Memorandum, EPA-HQ-OW-2009-0819-5681, with a particular emphasis on appendices A1, A2, A8, A73, A75, A76, A78, A79, and A80. Second is EPA's Incremental Costs and Pollutant Removals for the Final Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, EPA-HQ-OW-2009-0819-6472. And, third, is EPA's CBI Final Steam Electrical Technical Questionnaire Database, EPA-HQ-OW-2009-0819-6230.

I would appreciate it if you would review this request and let me know as soon as possible whether EPA will be able to supply the requested information without the need for NRG to file a FOIA request and, if so, when EPA will provide the requested information.

Many thanks in advance for your assistance with this request. I look forward to hearing from you at your earliest convenience. If you need any further information, please do not hesitate to contact me.

Best regards,

Kristy

Kristy A. N. Bulleit
Hunton & Williams LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037

Phone: 202/955-1547
Fax: 202/778-2201

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To: Beauvais, Joel[Beauvais.Joel@epa.gov]
Cc: Menezes, Mark W.[mmenezes@hunton.com]; Southerland, Elizabeth[Southerland.Elizabeth@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]
From: Wood, Robert
Sent: Sat 3/19/2016 12:51:08 AM
Subject: Re: ELG rule inquiry

Thanks, Joel. Hunton and Williams is representing UWAG and we are, through OGC and DOJ, in contact with two of their attorneys. One of them has raised date issues generally and we will very likely meet with them to discuss once they clarify specifically the issue(s).

Robert Wood
Director,
Engineering and Analysis Division
U.S. EPA Office of Water
202-566-1822

c) Ex. 6 - Personal Privacy

Sent from my iPhone (please excuse typos)

On Mar 18, 2016, at 7:23 PM, Beauvais, Joel <Beauvais.Joel@epa.gov> wrote:

Hi, Mark – I'm assuming you're referring to steam electric. I'm adding Betsy Southerland and Rob Wood in OW's Office of Science and Technology, who together with OGC, can connect with you on this as needed. If you still need my participation once you've connected, let me know.

Best,

Joel

From: Menezes, Mark W. [mailto:mmenezes@hunton.com]
Sent: Friday, March 18, 2016 11:29 AM
To: Beauvais, Joel <Beauvais.Joel@epa.gov>
Subject: ELG rule inquiry

Hi Joel,

Our utility clients are struggling to understand how the default date will work on near-term

permit renewals. We'd like to arrange a call to discuss with you. I'm aware of the demands on your time but we would be happy to accommodate your schedule.

I can be reached at my direct 202.419.212 or my cell

Ex. 6 - Personal Privacy

Hope you're well.

Best,

Mark

Bio vCard



Mark W. Menezes
Partner
mmenezes@hunton.com

Hunton & Williams LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037
Direct: 202.419.2122
Fax: 202.828.3780
www.hunton.com

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To: Menezes, Mark W.[mmenezes@hunton.com]
Cc: Southerland, Elizabeth[Southerland.Elizabeth@epa.gov]; Wood, Robert[Wood.Robert@epa.gov]
From: Beauvais, Joel
Sent: Fri 3/18/2016 11:23:56 PM
Subject: RE: ELG rule inquiry

Hi, Mark – I'm assuming you're referring to steam electric. I'm adding Betsy Southerland and Rob Wood in OW's Office of Science and Technology, who together with OGC, can connect with you on this as needed. If you still need my participation once you've connected, let me know.

Best,

Joel

From: Menezes, Mark W. [mailto:mmenezes@hunton.com]
Sent: Friday, March 18, 2016 11:29 AM
To: Beauvais, Joel <Beauvais.Joel@epa.gov>
Subject: ELG rule inquiry

Hi Joel,

Our utility clients are struggling to understand how the default date will work on near-term permit renewals. We'd like to arrange a call to discuss with you. I'm aware of the demands on your time but we would be happy to accommodate your schedule.

I can be reached at my direct 202.419.212 or my cell

Ex. 6 - Personal Privacy

Hope you're well.

Best,

Mark

[Bio](#) [vCard](#)



Mark W. Menezes
Partner
mmenezes@hunton.com

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2200 Pennsylvania Avenue, NW
Washington, DC 20037
Direct: 202.419.2122
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To: Zipf, Lynn[Zipf.Lynn@epa.gov]
Cc: Wood, Robert[Wood.Robert@epa.gov]
From: Bulleit, Kristy
Sent: Wed 10/28/2015 7:26:51 PM
Subject: RE: ELG rule to the Federal Register

Great, thanks.

From: Zipf, Lynn [mailto:Zipf.Lynn@epa.gov]
Sent: Wednesday, October 28, 2015 3:24 PM
To: Bulleit, Kristy
Cc: Wood, Robert
Subject: RE: ELG rule to the Federal Register

Kristy – we are on track for publication the week of November 2.

Lynn Zipf, Deputy Director

Engineering and Analysis Division

Office of Science and Technology

Office of Water

EPA West Room 6233A

(202) 564-1509

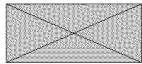
From: Bulleit, Kristy [mailto:kbulleit@hunton.com]
Sent: Wednesday, October 28, 2015 3:18 PM
To: Zipf, Lynn <Zipf.Lynn@epa.gov>
Cc: Bulleit, Kristy <kbulleit@hunton.com>
Subject: FW: ELG rule to the Federal Register

Lynn, I received an out-of-office email response from Rob, inviting me inquire of you in his absence. Could you answer my question?

Many thanks in advance for your help.

Best regards,

Kristy Bulleit



Kristy A. N. Bulleit

Partner

kbulleit@hunton.com

p 202.955.1547

[bio](#) | [vCard](#)

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Washington, DC 20037

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From: Bulleit, Kristy
Sent: Wednesday, October 28, 2015 3:07 PM
To: Wood, Robert K. (wood.robert@epamail.epa.gov)
Subject: ELG rule to the Federal Register

Rob, has EPA sent the final steam electric effluent limitations guidelines rule to the Federal Register yet? If not, are you still on track for publication next week?

To: Wood, Robert[Wood.Robert@epa.gov]
From: Bulleit, Kristy
Sent: Wed 9/30/2015 4:45:02 PM
Subject: Re: Final Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Industry

Thanks, Rob. We'll read it with interest.

Kristy

From: Wood, Robert [mailto:Wood.Robert@epa.gov]
Sent: Wednesday, September 30, 2015 10:47 AM
To: Bulleit, Kristy
Subject: Final Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Industry

Hello Kristy,

I am pleased to let you know that today, the Administrator will sign the Final Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Industry.

Attached is a fact sheet on the final rule and below are links to the press release and the final rule website where a pre-publication version of the preamble and rule will be available later today.

Final Rule Page: <http://www2.epa.gov/eg/steam-electric-power-generating-effluent-guidelines-2015-final-rule>

Press release:

<http://yosemite.epa.gov/opa/admpress.nsf/21b8983ffa5d0e4685257dd4006b85e2/28f1fe4861b581db85257ed000>

Please let me know if you have any questions. Thanks,

Rob

Robert K. Wood, Director

Engineering and Analysis Division

U.S. EPA Office of Water

202-566-1822

To: Bulleit, Kristy[kbulleit@hunton.com]
From: Wood, Robert
Sent: Wed 10/28/2015 9:49:36 PM
Subject: Re: ELG rule to the Federal Register

I expect publication on Nov. 3

Robert Wood
Director,
Engineering and Analysis Division
U.S. EPA Office of Water
202-566-1822
c) 202-329-8053

Sent from my iPhone (please excuse typos)

On Oct 28, 2015, at 2:07 PM, Bulleit, Kristy <kbulleit@hunton.com> wrote:

Rob, has EPA sent the final steam electric effluent limitations guidelines rule to the Federal Register yet? If not, are you still on track for publication next week?

Final Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Industry

Summary

EPA signed a final rule to revise the technology-based effluent limitations guidelines and standards that would strengthen the existing controls on discharges from steam electric power plants. The final rule sets the first federal limits on the amount of toxic metals and other harmful pollutants that steam electric power plants are allowed to discharge in several of their largest sources of wastewater, based on technology improvements in the steam electric power industry over the last three decades.

- More than 23,000 miles of rivers and streams are damaged by steam electric plant discharges
- On an annual basis, the rule is projected to reduce the amount of toxic metals, nutrients, and other pollutants that steam electric power plants are allowed to discharge by 1.4 billion pounds and reduce water withdrawal by 57 billion gallons.
- Estimated annual compliance costs for the final rule are \$480 million.

Background

Steam electric power plants discharge large volumes of wastewater, containing vast quantities of pollutants, into waters of the United States. The pollutants include both toxic and bioaccumulative pollutants such as arsenic, mercury, selenium, chromium, and cadmium. Today, these discharges account for about 30 percent of all toxic pollutants discharged into surface waters by all industrial

categories regulated under the Clean Water Act. The electric power industry has made great strides to reduce air pollutant emissions under Clean Air Act programs. Yet many of these pollutants are transferred to the wastewater as plants employ technologies to reduce air pollution.

The pollutants discharged by this industry can cause severe health and environmental problems in the form of cancer and non-cancer risks in humans, lowered IQ among children, and deformities and reproductive harm in fish and wildlife. Many of these pollutants, once in the environment, remain there for years. Due to their close proximity to these discharges and relatively high consumption of fish, some minority and low-income communities have greater exposure to, and are therefore at greater risk from, pollutants in steam electric power plant discharges.

There are, however, affordable technologies that are widely available, and already in place at some plants, which are capable of reducing or eliminating steam electric power plant discharges. In the several decades since the steam electric ELGs were last revised, such technologies have increasingly been used at plants. This final rule is the first to ensure that plants in the steam electric industry employ technologies designed to reduce discharges of toxic metals and other harmful pollutants discharged in the plants' largest sources of wastewater.

Who is affected by this regulation?

Certain coal-fired steam electric power plants will be affected by this rule. EPA estimates that about 12 percent of steam electric power plants will have to make new investments to meet the new requirements of this rule.

What does this rule require?

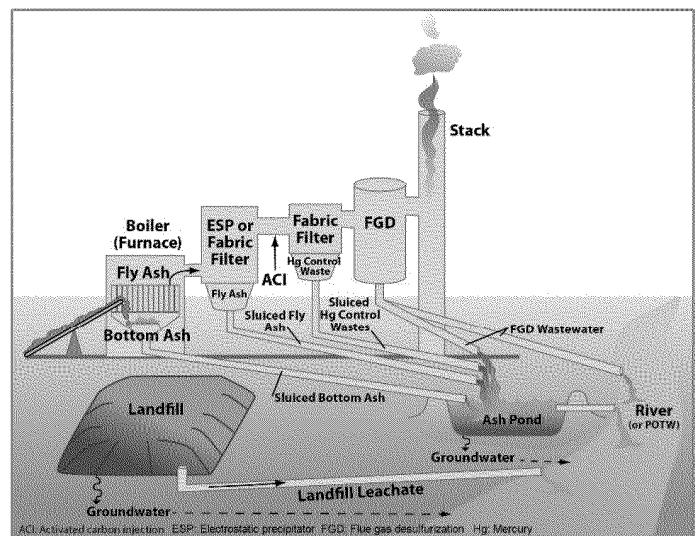
Generally, the final rule would establish new or additional requirements for wastewater streams from the following processes and byproducts associated with steam electric power generation: flue gas desulfurization, fly ash, bottom ash, flue gas mercury control, and gasification of fuels such as coal and petroleum coke.

The final rule phases in the new, more stringent requirements in the form of effluent limits for arsenic, mercury, selenium, and nitrogen for wastewater discharged from wet scrubber systems (flue gas desulfurization wastestream) and zero discharge of pollutants in ash transport water that must be incorporated into the plants' NPDES permits.

The rule encourages plants to commit to meeting even more stringent limits for pollutants in the flue gas desulfurization wastewater, plus a limit on total dissolved solids, based on evaporation technology, by giving them until the end of 2023 to meet the more stringent limits.

The rule also establishes zero discharge pollutant limits for flue gas mercury control wastewater, and stringent limits on arsenic, mercury, selenium and total dissolved solids in coal gasification wastewater, based on evaporation technology.

The rule also includes even more stringent controls for any new coal or petroleum coke plants that may be built in the future.



How much time does a steam electric power plant have before implementation?

Each plant must comply between 2018 and 2023 depending on when it needs a new Clean Water Act permit.

What are the benefits of this regulation?

There are numerous documented instances of environmental impacts associated with steam electric power plant discharges including widespread aquatic life impacts and toxic metal bioaccumulation in wildlife. In addition, there are increased cancer and non-cancer risks to humans from the pollutants. This regulation will greatly reduce these impacts. Of the benefits that could be monetized, EPA projects \$451 to \$566 million per year in benefits associated with this rule.

What are the costs of implementing this rule?

Compliance costs of the final rule are economically achievable, with an annual estimated cost of \$480 million per year.

Analysis shows that the rule will have minimal impacts on electricity prices and the amount of electricity generating capacity.

Where can I find more information?

For technical information about this rule, please contact Ronald Jordan by email at Jordan.ronald@epa.gov or by telephone at 202-566-1003. For economic information about this rule, please contact James Covington by email at Covington.james@epa.gov or by phone at 202-566-1034. You can also learn more about this rule by visiting EPA's website at:
<http://www2.epa.gov/eg/steam-electric-power-generating-effluent-guidelines-2015-final-rule>

To: McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]; Levine, MaryEllen[levine.maryellen@epa.gov]; Zomer, Jessica[Zomer.Jessica@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Thomas Cmar[tcmar@earthjustice.org]; 'Sheehan, John A.'[JSheehan@ClarkHill.com]; Grever, Tom (SHB)[TGREVER@shb.com]; 'Sullivan, Sean M.'[Sean.Sullivan@troutmansanders.com]; joshua.smith@sierraclub.org[joshua.smith@sierraclub.org]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; Matthew Gerhart[mgerhart@earthjustice.org]
Cc: Bulleit, Kristy[kbulleit@hunton.com]
From: Johnson, Harry M. ("Pete")
Sent: Fri 4/29/2016 11:57:57 AM
Subject: RE: STEAM ELECTRIC REVISED BRIEFING SCHEDULE
[removed.txt](#)

Martin,

After our call yesterday afternoon about the remaining points in dispute, I can confirm agreement on 18,000/9,000 words for Industry and Environmental petitioners' opening and reply briefs. Government has word count parity with petitioners. 35 pages for motions regarding record. Duke and City Utilities also have confirmed their assent.

I can't recall our specific discussion about word counts for intervenor briefs, but we have no objection to raising them to 9,000 from 8,750 if that is the consensus.

Please let me know if there are any outstanding questions or issues. Regards,

Pete



Harry M. Johnson, III

Partner

pjohnson@hunton.com

p 804.788.8784

[bio](#) | [vCard](#)

Hunton & Williams LLP

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From: Johnson, Harry M. ("Pete")

Sent: Wednesday, April 27, 2016 5:48 PM

To: McDermott, Martin (ENRD); Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Thomas Cmar; 'Sheehan, John A.'; Grever, Tom (SHB); 'Sullivan, Sean M.'; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Matthew Gerhart

Cc: Bulleit, Kristy

Subject: RE: STEAM ELECTRIC REVISED BRIEFING SCHEDULE

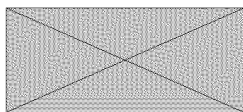
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Also, because of the nature of the expected motion(s) to complete the record, we do not feel 30 pages is sufficient. We can agree to drop our request to 35 pages.

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Sent: Wednesday, April 27, 2016 3:24 PM

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As for the motions briefing, we propose a compromise of 50% increase over FRAP 27 page limits.

We also agree with Pete's suggestion that we include language about accommodating scheduling conflicts.

Please let me know if we can proceed on this basis. Martin

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From: McDermott, Martin (ENRD)
Sent: Wed 4/27/2016 7:23:41 PM
Subject: STEAM ELECTRIC REVISED BRIEFING SCHEDULE
ENV DEFENSE-#764116-v1-
STEAM_ELECTRIC_REVISED_BRIEFING_SCHEDULE_APRIL_27___2016.docx

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PROPOSED SCHEDULING ORDER CONTENTS in *UWAG, et al. v. EPA* (5th Cir. Consolidated)

EPA files Certified Index to Administrative Record	30 days from date Court enters Scheduling Order
Due Date for any Motions* by Petitioners re: Administrative Record	14 days after Certified Index is filed
Petitioners’** Opening Briefs	75 days from judicial Resolution of any Record Motion. (“Resolution” defined as EPA compliance with any Court order on Record Motion or, if Record Motion is denied or referred to merits panel, from date Court denies or refers the Motion.)
Amicus Briefs (if any)	Per FRAP 29
EPA’s Response Brief	120 days from Opening Briefs
Intervenors’ Briefs	30 days after EPA’s Response Brief
Reply Briefs	30 days after Intervenors’ Briefs (Combined Replies to both EPA and Intervenors.)
Filing of Deferred Joint Appendix (JA)	21days after Reply Briefs
Final Briefs (with JA cites)	14 days after JA filed

RECORD MOTION

Page limits: Movants’ Opening Brief 30 pages; EPA’s Response 30 pages; Movants’ Optional Reply 15 pages. EPA’s Response to any Record Motion due 30 days after motion is filed; any Reply due 14 days thereafter.

JOINT BRIEFS

**UWAG, SWEPCo, Union-Electric, Duke Energy, and City Utilities of Springfield (“Industry Petitioners”) to file joint briefs; eNGOs (“Environmental Petitioners”) to file joint briefs; AWWA and NAWC (“AWWA”) to file joint briefs.

MERITS BRIEFS LENGTHS (word counts):

Opening Briefs of Industry and Environmental Petitioners	17,500 words each
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Opening Brief of AWWA	7,500 words
Response Brief of EPA (consolidated)	42,500 words
Intervenor Briefs (one each by Industry and Environmental Petitioners)	8,750 words
Reply Briefs of Industry and Environmental Petitioners	8,750 words
Reply Brief of AWWA	3,750 words
Amicus Briefs	Per FRAP 29

For the text of the joint motion to govern, the parties will propose including language to the following effect: “To the extent that briefing deadlines ultimately fall over holidays or create other unavoidable scheduling conflicts, the parties will consider in good faith agreeing to move jointly for slight modifications to the deadlines to reasonably accommodate schedules.”

To: Johnson, Harry M. (Pete)[pjohnson@hunton.com]; McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]; Thomas Cmar[tomar@earthjustice.org]; joshua.smith@sierraclub.org[joshua.smith@sierraclub.org]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; Grever, Tom (SHB)[TGREVER@shb.com]; mgerhart@earthjustice.org[mgerhart@earthjustice.org]; Sheehan, John A.[JSheehan@ClarkHill.com]
Cc: Levine, MaryEllen[levine.maryellen@epa.gov]; Zomer, Jessica[Zomer.Jessica@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Bulleit, Kristy[kbulleit@hunton.com]
From: Sullivan, Sean M.
Sent: Thur 4/14/2016 8:01:35 PM
Subject: RE: Motion to Govern in Steam Electric

Looks good to me, too.

Sean

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Johnson, Harry M. (Pete)" <pjohnson@hunton.com>
Date: 04/14/2016 3:14 PM (GMT-05:00)
To: "McDermott, Martin (ENRD)" <Martin.McDermott@usdoj.gov>, Thomas Cmar <tomar@earthjustice.org>, joshua.smith@sierraclub.org, casey.roberts@sierraclub.org, "Grever, Tom (SHB)" <TGREVER@shb.com>, "Sullivan, Sean M." <Sean.Sullivan@troutmansanders.com>, mgerhart@earthjustice.org, "Sheehan, John A." <JSheehan@ClarkHill.com>
Cc: "Levine, MaryEllen" <levine.maryellen@epa.gov>, "Zomer, Jessica" <Zomer.Jessica@epa.gov>, "Kupchan, Simma" <Kupchan.Simma@epa.gov>, "Bulleit, Kristy" <kbulleit@hunton.com>
Subject: RE: Motion to Govern in Steam Electric

Counsel,

Here is a draft motion for your consideration. It would extend the deadline for 2 weeks until 4/29 to submit a joint motion for an order governing the proceedings.

Martin, it is set up for your signature as with the last one – is that OK?

Regards,



Harry M. Johnson, III

Partner

pjohnson@hunton.com

p 804.788.8784

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Hunton & Williams LLP

hunton.com

From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]
Sent: Wednesday, April 13, 2016 2:59 PM
To: Johnson, Harry M. ("Pete"); Thomas Cmar; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB); Sullivan, Sean M.; mgerhart@earthjustice.org; Sheehan, John A.
Cc: Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Bulleit, Kristy
Subject: RE: Motion to Govern in Steam Electric

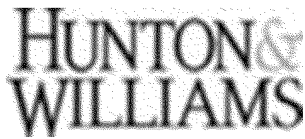
Pete – given the impending April 15 “motion to govern” filing date, I think it would be prudent to ask the court to extend that date for a week or two to allow the parties time to try to work out the issues raised by your proposal. If you agree, could you put together such a motion? I would think that all parties would concur. Martin

From: Johnson, Harry M. ("Pete") [<mailto:pjohnson@hunton.com>]
Sent: Tuesday, April 12, 2016 10:56 AM
To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>; 'Cmar, Thomas' <tcmar@nrdc.org>; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB) <TGREVER@shb.com>; Sullivan, Sean M. <Sean.Sullivan@troutmansanders.com>; mgerhart@earthjustice.org; Sheehan, John A. <JSheehan@ClarkHill.com>
Cc: Levine, MaryEllen <levine.maryellen@epa.gov>; Zomer, Jessica <Zomer.Jessica@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Bulleit, Kristy <kbulleit@hunton.com>
Subject: RE: Motion to Govern in Steam Electric

Counsel,

Here is the proposed outline for a case management order on behalf of UWAG, SWEPCo, and Union Electric. Duke Energy and City Utilities of Springfield are in agreement with it.

We look forward to your comments. Regards,



Harry M. Johnson, III

Partner

pjohnson@hunton.com

p 804.788.8784

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Hunton & Williams LLP

hunton.com

From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]

Sent: Friday, April 01, 2016 2:56 PM

To: Johnson, Harry M. ("Pete"); Bulleit, Kristy; 'Cmar, Thomas'; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB); Sullivan, Sean M.; mgerhart@earthjustice.org; Sheehan, John A.

Cc: Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma

Subject: Motion to Govern in Steam Electric

Counsel -- Preparatory to upcoming discussions on a motion to govern, could you please advise as to your current thinking on: (1) whether you intend to file consolidated/joint briefs (I am aware that the environmental petitioners intend to file jointly); (2) desired word counts, if at variance with standard counts; and (3) how many days you might want (separate from/irrespective of the timing of any initial motions that may be filed) to file your opening

briefs, and how many days for preparation of any intervenor briefs. Thanks, Martin

This e-mail communication (including any attachments) may contain legally privileged and confidential information intended solely for the use of the intended recipient. If you are not the intended recipient, you should immediately stop reading this message and delete it from your system. Any unauthorized reading, distribution, copying or other use of this communication (or its attachments) is strictly prohibited.

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From: McDermott, Martin (ENRD)
Sent: Wed 4/6/2016 6:29:32 PM
Subject: RE: Motion to Govern in Steam Electric
[removed.txt](#)

Pete -- I think it would be most helpful for petitioners to send out proposals by email, as a first step. We can follow up on that. Thanks. Martin

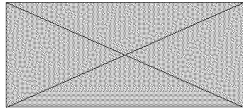
From: Johnson, Harry M. ("Pete") [mailto:pjohnson@hunton.com]
Sent: Tuesday, April 05, 2016 5:17 PM
To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>
Cc: Levine, MaryEllen <levine.maryellen@epa.gov>; Zomer, Jessica <Zomer.Jessica@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Bulleit, Kristy <kbulleit@hunton.com>; 'Cmar, Thomas' <tcmar@nrdc.org>; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB) <TGREVER@shb.com>; Sullivan, Sean M. <Sean.Sullivan@troutmansanders.com>; mgerhart@earthjustice.org; Sheehan, John A. <JSheehan@ClarkHill.com>
Subject: RE: Motion to Govern in Steam Electric

Martin,

We are working on this with our clients and will be able to respond soon. Should we set a call for early next week among the group who want to participate, or shall we exchange proposals via email?

Regards,

Pete



Harry M. Johnson, III

Partner

p 804.788.8784

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Cc: Bulleit, Kristy[kbulleit@hunton.com]
From: Johnson, Harry M. ("Pete")
Sent: Fri 4/29/2016 12:53:04 PM
Subject: RE: STEAM ELECTRIC REVISED BRIEFING SCHEDULE
[removed.txt](#)

Martin, can you also circulate the draft joint motion for review before you file it?

Thanks,

Pete

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To: McDermott, Martin (ENRD); Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Thomas Cmar; 'Sheehan, John A.'; Grever, Tom (SHB); 'Sullivan, Sean M.'; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Matthew Gerhart
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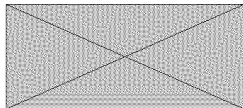
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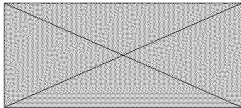
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Cc: Kupchan, Simma[Kupchan.Simma@epa.gov]; Levine, MaryEllen[levine.maryellen@epa.gov]; Bulleit, Kristy[kbulleit@hunton.com]
From: Thomas Cmar
Sent: Mon 3/28/2016 2:30:27 PM
Subject: RE: STEAM ELECTRIC ABEYANCE MOTION
removed.txt
ENV DEFENSE-#760093-v1-
STEAM_ELECTRIC_ABEYANCE_MOTION_REVISED_MARCH_22_DRAFT(tc).docx

Environmental Petitioners do not object to the edits proposed by UWAG. I note, however, that the redline that Pete circulated reflected edits to an earlier version of the draft; Martin circulated a subsequent version (in an email at 5:05 pm on 3/22) reflecting corrections to paragraph 2 and to Environmental Petitioners' signature blocks. I am re-circulating that version (and again, have no objection to the UWAG edits being made to this version).

From: Sullivan, Sean M. [mailto:Sean.Sullivan@troutmansanders.com]
Sent: Monday, March 28, 2016 6:26 AM
To: 'Johnson, Harry M. ("Pete")'; McDermott, Martin (ENRD); Grever, Tom (SHB); Thomas Cmar; Sheehan, John A.; casey.roberts@sierraclub.org; Matthew Gerhart
Cc: Kupchan, Simma; Levine, MaryEllen; Bulleit, Kristy
Subject: RE: STEAM ELECTRIC ABEYANCE MOTION

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Thanks.

Sean M. Sullivan

Troutman Sanders LLP

434 Fayetteville Street, Suite 1900

Raleigh, NC 27601

Office: (919) 835-4173

Cell: Ex. 6 - Personal Privacy

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Sent: Friday, March 25, 2016 2:22 PM

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Cc: Kupchan, Simma; Levine, MaryEllen; Bulleit, Kristy

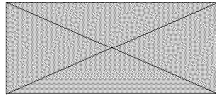
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p 804.788.8784

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 15-60821

SOUTHWESTERN ELECTRIC POWER COMPANY, et al.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.,
Respondents.

Petitions for Review of a Final Rule issued by the
United States Environmental Protection Agency

**JOINT MOTION TO HOLD CONSOLIDATED CASES IN FURTHER ABEYANCE
PENDING SUBMISSION OF MOTION TO GOVERN FURTHER PROCEEDINGS**

Petitioners and Respondents in these seven consolidated cases hereby jointly move the Court to continue to hold these consolidated cases in abeyance pending the parties' submission of a motion to govern further proceedings. In support hereof, the parties state the following:

1. On January 8, 2016, Respondent EPA, together with Petitioners and Intervenor in the original four consolidated cases, moved for an order holding the cases in abeyance and staying all proceedings therein – including any deadlines for filing the administrative record, appendix, and merits briefs – until after the expiration of the 120-day statutory deadline (March 16, 2016) for filing judicial challenges to the rule at issue: “Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category” (“the Challenged Rule” or “Rule”). 80 Fed. Reg. 67,838 (Nov. 3, 2015). The Court granted that abeyance motion on January 15, 2016.

2. Thereafter, prior to expiration of the 120-day deadline, three additional petitions seeking judicial review of the Rule were filed and subsequently consolidated for adjudication by this Court: one by American Water Works Association and National Association of Water Companies (filed in this Court); a second by City of Springfield, Missouri (originally filed in the Eighth Circuit but now transferred to this Court); and a third by Duke Energy Indiana, Inc. (originally filed in the Seventh Circuit but now transferred to this Court).
3. The parties request the opportunity to craft a joint motion to govern further proceedings, addressing the parties' proposals for: (1) the date for EPA to file the certified index to the administrative record, which is voluminous; (2) the consolidation of briefing by the parties, to minimize the burden on the Court; (3) the dates for the filing of the parties' proof briefs, the joint deferred appendix, and the final briefs; (4) word counts for briefs; and (5) such other matters as may be necessary or appropriate under the circumstances.
4. The parties request that the Court issue an order setting April 8, 2016 as the filing date for said joint motion to govern further proceedings.

Dated: March *, 2016

Respectfully submitted by:

/s/ Martin F. McDermott

Martin F. McDermott
United States Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
601 D Street, N.W., Suite 8000
Washington, D.C. 20004
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Counsel for Respondent EPA

/s/ Kristy A.N. Bulleit

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kbulleit@hunton.com

*Counsel for Petitioner/Intervenor Utility Water Act
Group and Southwestern Electric Power Company*

/s/ Harry M. Johnson, III

Harry M. Johnson, III

Hunton & Williams LLP

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*Counsel for Petitioner/Intervenor Utility Water Act
Group and Union Electric Company*

/s/ Thomas J. Cmar

Thomas J. Cmar

Earthjustice

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*Counsel for Petitioner/Intervenors Sierra Club,
Environmental Integrity Project and Waterkeeper
Alliance, Inc., and for Intervenor Clean Water
Action*

/s/ Matthew Gerhart

Matthew Gerhart

Earthjustice

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*Counsel for Petitioner/Intervenors Sierra Club,
Waterkeeper Alliance, Inc. and Environmental
Integrity Project, and for Intervenor Clean Water
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/s/ Casey Roberts

Casey Roberts

Sierra Club

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San Francisco, CA 94105-3441

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casey.roberts@sierraclub.org
Counsel for Petitioner/Intervenor Sierra Club

/s/ Joshua Smith
Joshua Smith
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joshua.smith@sierraclub.org
Counsel for Petitioner/Intervenor Sierra Club

/s/ Thomas J. Grever
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Shook, Hardy & Bacon, L.L.P.
2555 Grand Boulevard
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816-559-2375 (tel.)
tgrever@shb.com
*Counsel for Petitioner City of Springfield, Missouri,
by and through the Board of Public Utilities*

/s/ John A. Sheehan
John A. Sheehan
Clark Hill PLC
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Washington, D.C. 20004
202-572-8665 (tel.)
jsheehan@clarkhill.com
*Counsel for American Water Works Association
and National Association of Water Companies*

/s/ Sean M. Sullivan
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Raleigh, NC 27601
919-835-4173 (tel.)
sean.sullivan@troutmansanders.com
Counsel for Petitioner Duke Energy Indiana, Inc.

CERTIFICATE OF SERVICE

I certify that on March *, 2016, a true and correct copy of the foregoing **JOINT MOTION TO HOLD CONSOLIDATED CASES IN FURTHER ABEYANCE PENDING SUBMISSION OF MOTION TO GOVERN FURTHER PROCEEDINGS** was filed through the Court's ECF system, and thereby served on all counsel of record for Petitioners in the consolidated cases.

/s/ Martin F. McDermott
Martin F. McDermott
Attorney for Respondents

To: 'Johnson, Harry M. ("Pete")'[pjohnson@hunton.com]; McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]; Grever, Tom (SHB)[TGREVER@shb.com]; Thomas Cmar[tcmar@earthjustice.org]; Sheehan, John A.[JSheehan@ClarkHill.com]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; mgerhart@earthjustice.org[mgerhart@earthjustice.org]
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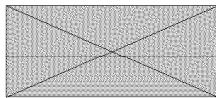
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City Utilities of Springfield agrees with these edits.

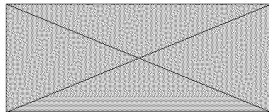
-Tom

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Partner

Shook, Hardy & Bacon L.L.P.

816.559.2375 | tgrever@shb.com



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Subject: RE: STEAM ELECTRIC ABEYANCE MOTION

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Kristy and I are discussing these issues with our clients now, and we will get back to you asap. As you know, we have issues with the public record for the rule and are likely to file a motion in that regard, so I strongly suspect we will want that issue addressed in any case management order/briefing schedule. Do you have an idea as to when you will be filing the index to the certified record?

Thanks,

Pete



Harry M. Johnson, III

Partner

pjohnson@hunton.com

p 804.788.8784

[bio](#) | [vCard](#)

Hunton & Williams LLP

hunton.com

From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]

Sent: Tuesday, March 22, 2016 12:52 PM

To: Bulleit, Kristy; Johnson, Harry M. ("Pete"); Grever, Tom (SHB); Thomas Cmar; Sheehan, John A.; casey.roberts@sierraclub.org; Sullivan, Sean M.; mgerhart@earthjustice.org

Cc: Kupchan, Simma; Levine, MaryEllen

Subject: STEAM ELECTRIC ABEYANCE MOTION

Counsel – please advise if you consent to the attached procedural motion. The clerk is looking for this to be filed soon. Also, it would be helpful if you could send me an email letting me know (1) whether you intend to file jointly with others, and if so, with whom; (2) the date that you would propose for filing your opening brief; (3) proposed word counts for the foregoing, for any intervenor brief, and for any reply; and (4) any other matter you believe might be appropriate to include in a motion to govern. Also, if I've inadvertently left anyone off this email distribution or off the motion, please let me know. Thanks. Martin

Mail Gate made the following annotations on Fri Mar 25 2016 13:37:00

CONFIDENTIALITY NOTICE: This e-mail message including attachments, if any, is intended for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the

intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. Thank you.

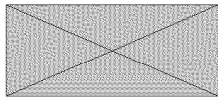
To: McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]; Grever, Tom (SHB)[TGREVER@shb.com]; Thomas Cmar[tcmar@earthjustice.org]; Sheehan, John A.[JSheehan@ClarkHill.com]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; Sullivan, Sean M.[Sean.Sullivan@troutmansanders.com]; mgerhart@earthjustice.org[mgerhart@earthjustice.org]
Cc: Kupchan, Simma[Kupchan.Simma@epa.gov]; Levine, MaryEllen[levine.maryellen@epa.gov]; Bulleit, Kristy[kbulleit@hunton.com]
From: Johnson, Harry M. ("Pete")
Sent: Fri 3/25/2016 6:22:26 PM
Subject: RE: STEAM ELECTRIC ABEYANCE MOTION
[removed.txt](#)
[redline of mcdermott motion 59853806 1.docx](#)

Martin,

Sorry for the confusion. I really wanted to make sure that your proposed motion would expressly contemplate motions regarding the record once the index has been filed, given that such motions are likely. The current version does not seem to contemplate that. Attached is a counterproposal in track changes to which Kristy's and my clients can agree. It is only slightly modified.

Let me know if you, or anyone else, have any questions. Regards,

Pete



Harry M. Johnson, III

Partner

pjohnson@hunton.com

p 804.788.8784

[bio](#) | [vCard](#)

Hunton & Williams LLP

hunton.com

From: McDermott, Martin (ENRD) [mailto:Martin.McDermott@usdoj.gov]
Sent: Friday, March 25, 2016 11:35 AM

To: Johnson, Harry M. ("Pete"); Grever, Tom (SHB); Thomas Cmar; Sheehan, John A.; casey.roberts@sierraclub.org; Sullivan, Sean M.; mgerhart@earthjustice.org
Cc: Kupchan, Simma; Levine, MaryEllen; Bulleit, Kristy
Subject: RE: STEAM ELECTRIC ABEYANCE MOTION

Pete – I'm confused by your email. The intent of the current proposed motion is simply to stay the case for short time while the parties endeavor to work out -- in the context of a motion to govern -- the types of issues you raise in your email. What about the "current form of the motion" do you find troubling other than the April 8 date, which I am amenable to moving to April 15? The environmental petitioners and American Water Works Assn. have agreed to the motion in its current format and based on my discussion with the clerk, I believe we need to get this on file promptly. Martin

Martin,

Conceptually, continuing the stay to seek agreement upon a scheduling order is acceptable, but we have concerns about the current form of the motion because of our dispute about the contents of the public record.

Kristy's and my clients would be willing to agree to hold the case in abeyance while the parties work on a scheduling order. However, we believe the scheduling order should set a date for EPA to file the certified index to the record, then allow a short time (maybe 14 days) for the parties to file any motions regarding the record. Deadlines for filing briefs should be triggered by final resolution of those motions. The draft motion to continue the stay would need to reflect this expectation in some fashion.

For instance, petitioners' briefs could be due 90 days after all the record issues are fully resolved. If the court denies the motions regarding the record, the petitioners' briefs would be due 90 days from entry of the court's order. If, on the other hand, the court gives EPA, say, 30 days to produce unredacted versions of certain documents, the 90-day period would run from the date EPA complies.

I also suspect that April 8 is too aggressive. We have several latecomers to the case

and lots of counsel, so the scheduling order may take more than 2 weeks to hammer out, especially if some are taking vacations. I would suggest April 15.

Regards,

Pete



Harry M. Johnson, III

Partner

pjohnson@hunton.com

p 804.788.8784

[bio](#) | [vCard](#)

Hunton & Williams LLP

hunton.com

From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]

Sent: Wednesday, March 23, 2016 1:40 PM

To: Johnson, Harry M. ("Pete"); Grever, Tom (SHB); Thomas Cmar; Sheehan, John A.; casey.roberts@sierraclub.org; Sullivan, Sean M.; mgerhart@earthjustice.org

Cc: Kupchan, Simma; Levine, MaryEllen; Bulleit, Kristy

Subject: RE: STEAM ELECTRIC ABEYANCE MOTION

Pete (and others) – I am checking with EPA on the record index preparation. In the short term, I would like to get something on file to let the clerk know that the parties are working on a motion to govern. Is the draft abeyance motion acceptable? Martin

From: Johnson, Harry M. ("Pete") [<mailto:pjohnson@hunton.com>]

Sent: Wednesday, March 23, 2016 11:41 AM

To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>; Grever, Tom (SHB) <TGREVER@shb.com>; Thomas Cmar <tcmar@earthjustice.org>; Sheehan, John A.

<JSheehan@ClarkHill.com>; casey.roberts@sierraclub.org; Sullivan, Sean M.
<Sean.Sullivan@troutmansanders.com>; mgerhart@earthjustice.org
Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Levine, MaryEllen
<levine.maryellen@epa.gov>; Bulleit, Kristy <kbulleit@hunton.com>
Subject: RE: STEAM ELECTRIC ABEYANCE MOTION

Martin,

Kristy and I are discussing these issues with our clients now, and we will get back to you asap. As you know, we have issues with the public record for the rule and are likely to file a motion in that regard, so I strongly suspect we will want that issue addressed in any case management order/briefing schedule. Do you have an idea as to when you will be filing the index to the certified record?

Thanks,

Pete



Harry M. Johnson, III

Partner

pjohnson@hunton.com

p 804.788.8784

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From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]

Sent: Tuesday, March 22, 2016 12:52 PM

To: Bulleit, Kristy; Johnson, Harry M. ("Pete"); Grever, Tom (SHB); Thomas Cmar; Sheehan, John A.; casey.roberts@sierraclub.org; Sullivan, Sean M.; mgerhart@earthjustice.org

Cc: Kupchan, Simma; Levine, MaryEllen
Subject: STEAM ELECTRIC ABEYANCE MOTION

Counsel – please advise if you consent to the attached procedural motion. The clerk is looking for this to be filed soon. Also, it would be helpful if you could send me an email letting me know (1) whether you intend to file jointly with others, and if so, with whom; (2) the date that you would propose for filing your opening brief; (3) proposed word counts for the foregoing, for any intervenor brief, and for any reply; and (4) any other matter you believe might be appropriate to include in a motion to govern. Also, if I’ve inadvertently left anyone off this email distribution or off the motion, please let me know. Thanks. Martin

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 15-60821

SOUTHWESTERN ELECTRIC POWER COMPANY, et al.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.,
Respondents.

Petitions for Review of a Final Rule issued by the
United States Environmental Protection Agency

**JOINT MOTION TO HOLD CONSOLIDATED CASES IN FURTHER ABEYANCE
PENDING SUBMISSION OF MOTION TO GOVERN FURTHER PROCEEDINGS**

Petitioners and Respondents in these seven consolidated cases hereby jointly move the Court to continue to hold these consolidated cases in abeyance pending the parties' submission of a motion to govern further proceedings. In support hereof, the parties state the following:

1. On January 8, 2016, Respondent EPA, together with Petitioners and Intervenor in the original four consolidated cases, moved for an order holding the cases in abeyance and staying all proceedings therein – including any deadlines for filing the administrative record, appendix, and merits briefs – until after the expiration of the 120-day statutory deadline (March 16, 2016) for filing judicial challenges to the rule at issue: “Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category” (“the Challenged Rule” or “Rule”). 80 Fed. Reg. 67,838 (Nov. 3, 2015). The Court granted that abeyance motion on January 15, 2016.

2. Thereafter, prior to expiration of the 120-day deadline, three additional petitions seeking judicial review of the Rule were filed and subsequently consolidated for adjudication by this Court: one by American Water Works Association and National Association of Water Companies (filed in this Court); a second by City of Springfield, Missouri (originally filed in the Seventh Circuit but now transferred to this Court); and a third by Duke Energy Indiana, Inc. (originally filed in the Eighth Circuit but now transferred to this Court).
3. The parties request the opportunity to craft a joint motion to govern further proceedings, addressing the parties' proposals for: (1) the date for EPA to file the certified index to the administrative record, which is voluminous; (2) the consolidation of briefing by the parties, to minimize the burden on the Court; (3) filing and resolution of any motions regarding the completeness of the record; (4) the dates for the filing of the parties' proof briefs, the joint deferred appendix, and the final briefs; (5) word counts for briefs; and (6) such other matters as may be necessary or appropriate under the circumstances.
4. The parties request that the Court issue an order setting April 15, 2016 as the filing date for said joint motion to govern further proceedings.

Dated: March *, 2016

Respectfully submitted by:

/s/ Martin F. McDermott

Martin F. McDermott

United States Department of Justice

Environment & Natural Resources Division

Environmental Defense Section

601 D Street, N.W., Suite 8000

Washington, D.C. 20004

202-514-4122 (tel)

martin.mcdermott@usdoj.gov

Counsel for Respondent EPA

/s/ Kristy A.N. Bulleit

Kristy A.N. Bulleit

Hunton & Williams LLP

2200 Pennsylvania Avenue, N.W.
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202-955-1547 (tel.)
kbulleit@hunton.com
*Counsel for Petitioner/Intervenor Utility Water Act
Group and Southwestern Electric Power Company*

/s/ Harry M. Johnson, III
Harry M. Johnson, III
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804-788-8200 (tel.)
pjohnson@hunton.co
*Counsel for Petitioner/Intervenor Utility Water Act
Group and Union Electric Company*

/s/ Thomas J. Cmar
Thomas J. Cmar
Earthjustice
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Oak Park, IL 60301
312-257-9338 (tel.)
tcmar@earthjustice.org
*Counsel for Petitioners Environmental Integrity
Project and Waterkeeper Alliance, Inc., and for
Intervenor Clean Water Action*

/s/ Matthew Gerhart
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705 Second Ave., Suite 203
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206-343-7340 (tel.)
mgerhart@earthjustice.org
*Counsel for Petitioners Waterkeeper Alliance, Inc.
and Environmental Integrity Project, and for
Intervenor Clean Water Action*

/s/ Casey Roberts
Casey Roberts
Sierra Club
85 Second Street, Second Floor
San Francisco, CA 94105-3441
415-977-5710 (tel.)

casey.roberts@sierraclub.org

Counsel for Petitioner/Intervenor Sierra Club

/s/ Thomas J. Grever

Thomas J. Grever

Shook, Hardy & Bacon, L.L.P.

2555 Grand Boulevard

Kansas City, MO 64108-2613

816-559-2375 (tel.)

tgrever@shb.com

*Counsel for Petitioner City of Springfield, Missouri,
by and through the Board of Public Utilities*

/s/ John A. Sheehan

John A. Sheehan

Clark Hill PLC

601 Pennsylvania Ave., NW

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Washington, D.C. 20004

202-572-8665 (tel.)

jsheehan@clarkhill.com

*Counsel for American Water Works Association
and National Association of Water Companies*

/s/ Sean M. Sullivan

Sean M. Sullivan

Troutman Sanders LLP

434 Fayetteville Street, Suite 1900

Raleigh, NC 27601

919-835-4173 (tel.)

sean.sullivan@troutmansanders.com

Counsel for Petitioner Duke Energy Indiana, Inc.

CERTIFICATE OF SERVICE

I certify that on March *, 2016, a true and correct copy of the foregoing **JOINT MOTION TO HOLD CONSOLIDATED CASES IN FURTHER ABEYANCE PENDING SUBMISSION OF MOTION TO GOVERN FURTHER PROCEEDINGS** was filed through the Court's ECF system, and thereby served on all counsel of record for Petitioners in the consolidated cases.

/s/ Martin F. McDermott
Martin F. McDermott
Attorney for Respondents

To: Bulleit, Kristy[kbulleit@hunton.com]; Johnson, Harry M. ("Pete")[pjohnson@hunton.com]; Grever, Tom (SHB)[TGREVER@shb.com]; Thomas Cmar[tcmar@earthjustice.org]; Sheehan, John A.[JSheehan@ClarkHill.com]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; Sullivan, Sean M.[Sean.Sullivan@troutmansanders.com]; mgerhart@earthjustice.org[mgerhart@earthjustice.org]
Cc: Kupchan, Simma[Kupchan.Simma@epa.gov]; Levine, MaryEllen[levine.maryellen@epa.gov]
From: McDermott, Martin (ENRD)
Sent: Tue 3/22/2016 4:52:25 PM
Subject: STEAM ELECTRIC ABEYANCE MOTION
ENV DEFENSE-#760093-v1-
STEAM_ELECTRIC_ABEYANCE_MOTION_REVISED_MARCH_22_DRAFT.docx

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4. The parties request that the Court issue an order setting April 8, 2016 as the filing date for said joint motion to govern further proceedings.

Dated: March *, 2016

Respectfully submitted by:

/s/ Martin F. McDermott

Martin F. McDermott
United States Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
601 D Street, N.W., Suite 8000
Washington, D.C. 20004
202-514-4122 (tel)
martin.mcdermott@usdoj.gov
Counsel for Respondent EPA

/s/ Kristy A.N. Bulleit

Kristy A.N. Bulleit
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Washington, D.C. 20037-1709

202-955-1547 (tel.)

kbulleit@hunton.com

*Counsel for Petitioner/Intervenor Utility Water Act
Group and Southwestern Electric Power Company*

/s/ Harry M. Johnson, III

Harry M. Johnson, III

Hunton & Williams LLP

Riverfront Plaza, East Tower

951 East Byrd Street

Richmond, VA 23219-4074

804-788-8200 (tel.)

pjohnson@hunton.co

*Counsel for Petitioner/Intervenor Utility Water Act
Group and Union Electric Company*

/s/ Thomas J. Cmar

Thomas J. Cmar

Earthjustice

1101 Lake Street, Suite 405B

Oak Park, IL 60301

312-257-9338 (tel.)

tcmar@earthjustice.org

*Counsel for Petitioners Environmental Integrity
Project and Waterkeeper Alliance, Inc., and for
Intervenor Clean Water Action*

/s/ Matthew Gerhart

Matthew Gerhart

Earthjustice

705 Second Ave., Suite 203

Seattle, WA 98104

206-343-7340 (tel.)

mgerhart@earthjustice.org

*Counsel for Petitioners Waterkeeper Alliance, Inc.
and Environmental Integrity Project, and for
Intervenor Clean Water Action*

/s/ Casey Roberts

Casey Roberts

Sierra Club

85 Second Street, Second Floor

San Francisco, CA 94105-3441

415-977-5710 (tel.)

casey.roberts@sierraclub.org

Counsel for Petitioner/Intervenor Sierra Club

/s/ Thomas J. Grever

Thomas J. Grever
Shook, Hardy & Bacon, L.L.P.
2555 Grand Boulevard
Kansas City, MO 64108-2613
816-559-2375 (tel.)

tgrever@shb.com

*Counsel for Petitioner City of Springfield, Missouri,
by and through the Board of Public Utilities*

/s/ John A. Sheehan

John A. Sheehan
Clark Hill PLC
601 Pennsylvania Ave., NW
Suite 1000
Washington, D.C. 20004
202-572-8665 (tel.)

jsheehan@clarkhill.com

*Counsel for American Water Works Association
and National Association of Water Companies*

/s/ Sean M. Sullivan

Sean M. Sullivan
Troutman Sanders LLP
434 Fayetteville Street, Suite 1900
Raleigh, NC 27601
919-835-4173 (tel.)

sean.sullivan@troutmansanders.com

Counsel for Petitioner Duke Energy Indiana, Inc.

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/s/ Martin F. McDermott
Martin F. McDermott
Attorney for Respondents

To: 'Sheehan, John A.'[JSheehan@ClarkHill.com]; Grever, Tom (SHB)[TGREVER@shb.com]; 'Sullivan, Sean M.'[Sean.Sullivan@troutmansanders.com]; Johnson, Harry M. (Pete)[pjohnson@hunton.com]; McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]; joshua.smith@sierraclub.org[joshua.smith@sierraclub.org]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; Matthew Gerhart[mgerhart@earthjustice.org]
Cc: Levine, MaryEllen[levine.maryellen@epa.gov]; Zomer, Jessica[Zomer.Jessica@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Bulleit, Kristy[kbulleit@hunton.com]
From: Thomas Cmar
Sent: Thur 4/14/2016 8:39:50 PM
Subject: RE: Motion to Govern in Steam Electric
removed.txt
Second Joint Motion to Hold in Abeyance 60145112 2(tc).DOCX

The environmental NGO parties are fine with the substance of the joint motion. There are, however, a number of corrections needed to the signature blocks. I'm attaching a version with corrections in track changes. With these corrections incorporated, we agree to the filing of the joint motion. Thanks.

From: Sheehan, John A. [mailto:JSheehan@ClarkHill.com]
Sent: Thursday, April 14, 2016 3:30 PM
To: Grever, Tom (SHB); 'Sullivan, Sean M.'; Johnson, Harry M. (Pete); McDermott, Martin (ENRD); Thomas Cmar; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Matthew Gerhart
Cc: Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Bulleit, Kristy
Subject: RE: Motion to Govern in Steam Electric

AWWA and NAWC agree to the Joint Motion.

John

John A. Sheehan

CLARK HILL PLC
202.572.8665 (direct) | 202.572.8687 (fax) | cell)
jsheehan@clarkhill.com | www.clarkhill.com Ex. 6 - Personal Privacy

From: Grever, Tom (SHB) [mailto:TGREVER@shb.com]
Sent: Thursday, April 14, 2016 4:10 PM

To: 'Sullivan, Sean M.'; Johnson, Harry M. (Pete); McDermott, Martin (ENRD); Thomas Cmar; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; mgerhart@earthjustice.org; Sheehan, John A.
Cc: Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Bulleit, Kristy
Subject: RE: Motion to Govern in Steam Electric

We agree. Thanks,

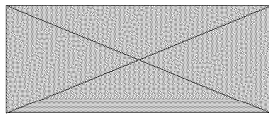
Tom

Thomas J. Grever

Partner

Shook, Hardy & Bacon L.L.P.

816.559.2375 | tgrever@shb.com



From: Sullivan, Sean M. [<mailto:Sean.Sullivan@troutmansanders.com>]
Sent: Thursday, April 14, 2016 3:02 PM
To: Johnson, Harry M. (Pete); McDermott, Martin (ENRD); Thomas Cmar; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB); mgerhart@earthjustice.org; Sheehan, John A.
Cc: Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Bulleit, Kristy
Subject: RE: Motion to Govern in Steam Electric

Looks good to me, too.

Sean

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Johnson, Harry M. (Pete)" <pjohnson@hunton.com>

Date: 04/14/2016 3:14 PM (GMT-05:00)

To: "McDermott, Martin (ENRD)" <Martin.McDermott@usdoj.gov>, Thomas Cmar <tcmar@earthjustice.org>, joshua.smith@sierraclub.org, casey.roberts@sierraclub.org, "Grever, Tom (SHB)" <TGREVER@shb.com>, "Sullivan, Sean M." <Sean.Sullivan@troutmansanders.com>, mgerhart@earthjustice.org, "Sheehan, John A." <JSheehan@ClarkHill.com>

Cc: "Levine, MaryEllen" <levine.maryellen@epa.gov>, "Zomer, Jessica" <Zomer.Jessica@epa.gov>, "Kupchan, Simma" <Kupchan.Simma@epa.gov>, "Bulleit, Kristy" <kbulleit@hunton.com>

Subject: RE: Motion to Govern in Steam Electric

Counsel,

Here is a draft motion for your consideration. It would extend the deadline for 2 weeks until 4/29 to submit a joint motion for an order governing the proceedings.

Martin, it is set up for your signature as with the last one – is that OK?

Regards,



Harry M. Johnson, III

Partner

pjohnson@hunton.com
p 804.788.8784

[bio](#) | [vCard](#)

Hunton & Williams LLP

hunton.com

From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]
Sent: Wednesday, April 13, 2016 2:59 PM
To: Johnson, Harry M. ("Pete"); Thomas Cmar; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB); Sullivan, Sean M.; mgerhart@earthjustice.org; Sheehan, John A.
Cc: Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Bulleit, Kristy
Subject: RE: Motion to Govern in Steam Electric

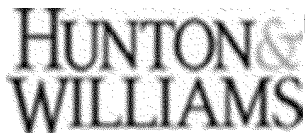
Pete – given the impending April 15 “motion to govern” filing date, I think it would be prudent to ask the court to extend that date for a week or two to allow the parties time to try to work out the issues raised by your proposal. If you agree, could you put together such a motion? I would think that all parties would concur. Martin

From: Johnson, Harry M. ("Pete") [<mailto:pjohnson@hunton.com>]
Sent: Tuesday, April 12, 2016 10:56 AM
To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>; 'Cmar, Thomas' <tcmar@nrdc.org>; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB) <TGREVER@shb.com>; Sullivan, Sean M. <Sean.Sullivan@troutmansanders.com>; mgerhart@earthjustice.org; Sheehan, John A. <JSheehan@ClarkHill.com>
Cc: Levine, MaryEllen <levine.maryellen@epa.gov>; Zomer, Jessica <Zomer.Jessica@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Bulleit, Kristy <kbulleit@hunton.com>
Subject: RE: Motion to Govern in Steam Electric

Counsel,

Here is the proposed outline for a case management order on behalf of UWAG, SWEPCo, and Union Electric. Duke Energy and City Utilities of Springfield are in agreement with it.

We look forward to your comments. Regards,



Harry M. Johnson, III

p 804.788.8784

[bio](#) | [vCard](#)

Hunton & Williams LLP

[hunton.com](#)

From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]

Sent: Friday, April 01, 2016 2:56 PM

To: Johnson, Harry M. ("Pete"); Bulleit, Kristy; 'Cmar, Thomas'; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB); Sullivan, Sean M.; mgerhart@earthjustice.org; Sheehan, John A.

Cc: Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma

Subject: Motion to Govern in Steam Electric

Counsel -- Preparatory to upcoming discussions on a motion to govern, could you please advise as to your current thinking on: (1) whether you intend to file consolidated/joint briefs (I am aware that the environmental petitioners intend to file jointly); (2) desired word counts, if at variance with standard counts; and (3) how many days you might want (separate from/irrespective of the timing of any initial motions that may be filed) to file your opening briefs, and how many days for preparation of any intervenor briefs. Thanks, Martin

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Mail Gate made the following annotations on Thu Apr 14 2016 15:11:02

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 15-60821

SOUTHWESTERN ELECTRIC POWER COMPANY, et al.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.,
Respondents.

Petitions for Review of a Final Rule issued by the
United States Environmental Protection Agency

**SECOND JOINT MOTION TO HOLD CONSOLIDATED CASES IN
FURTHER ABEYANCE PENDING SUBMISSION OF MOTION
TO GOVERN FURTHER PROCEEDINGS**

Petitioners and Respondents in these seven consolidated cases hereby jointly move the Court to continue to hold these consolidated cases in abeyance for an additional two weeks pending the parties' submission of a motion to govern further proceedings. In support hereof, the parties state the following:

1. On January 8, 2016, Respondent EPA, together with Petitioners and Intervenors in the original four consolidated cases, moved for an order holding the cases in abeyance and staying all proceedings therein – including any deadlines for filing the administrative record, appendix, and merits briefs – until after the expiration of the 120-day statutory deadline (March 16, 2016) for filing judicial challenges to the rule at issue: “Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category” (“the Challenged Rule” or “Rule”). 80 Fed. Reg. 67,838 (Nov. 3, 2015). The Court granted that abeyance motion on

January 15, 2016.

2. On March 29, 2016, Respondent EPA, together with Petitioners and Intervenors in the original and subsequent consolidated cases, moved for an order holding the cases in further abeyance and staying all proceedings therein, until such time as the parties could craft a joint motion to govern further proceedings, addressing the parties' proposals for: (1) the date for EPA to file the certified index to the administrative record, which is voluminous; (2) the consolidation of briefing by the parties, to minimize the burden on the Court; (3) the filing and resolution of any motions regarding the completeness of the record; (4) the dates for the filing of the parties' proof briefs, the joint deferred appendix, and the final briefs; (5) word counts for briefs; and (6) such other matters as may be necessary or appropriate under the circumstances. The Court granted that abeyance motion on March 30, 2016.

4. The parties have been diligently discussing a joint motion to govern further proceedings, but, as there are many parties in these consolidated cases, a final agreement has not yet been reached. However, with leave from the Court, the parties believe they will reach an agreement soon and be in a position to submit a joint motion by April 29, 2016.

5. As such, the parties request that the Court issue an order setting April 29, 2016 as the new filing date for a joint motion to govern further proceedings.

Dated: April 15, 2016

Respectfully submitted by:

/s/ Martin F. McDermott

Martin F. McDermott

United States Department of Justice

Environment & Natural Resources Division

Environmental Defense Section

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*Counsel for Petitioner/Intervenors Utility Water Act
Group and Union Electric Company*

/s/ Thomas J. Cmar

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Action*

/s/ Matthew Gerhart

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Integrity Project, and for Intervenor Clean Water
Action*

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tgrever@shb.com
*Counsel for Petitioner City of Springfield, Missouri,
by and through the Board of Public Utilities*

/s/ John A. Sheehan
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jsheehan@clarkhill.com
*Counsel for Petitioners American Water Works
Association and National Association of Water
Companies*

/s/ Sean M. Sullivan
Sean M. Sullivan

Troutman Sanders LLP
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Raleigh, NC 27601
919-835-4173 (tel.)
sean.sullivan@troutmansanders.com
Counsel for Petitioner Duke Energy Indiana, Inc.

CERTIFICATE OF SERVICE

I certify that on April 15, 2016, a true and correct copy of the foregoing **SECOND JOINT MOTION TO HOLD CONSOLIDATED CASES IN FURTHER ABEYANCE PENDING SUBMISSION OF MOTION TO GOVERN FURTHER PROCEEDINGS** was filed through the Court's ECF system, and thereby served on all counsel of record for Petitioners in the consolidated cases.

/s/ Martin F. McDermott
Martin F. McDermott
Attorney for Respondents

To: Bulleit, Kristy[kbulleit@hunton.com]
Cc: 'McDermott, Martin (ENRD)'[Martin.McDermott@usdoj.gov]; Levine, MaryEllen[levine.maryellen@epa.gov]; McHugh, Timothy L.[TMcHugh@hunton.com]; Matuszko, Jan[Matuszko.Jan@epa.gov]; Jordan, Ronald[Jordan.Ronald@epa.gov]
From: Wood, Robert
Sent: Mon 3/28/2016 8:54:20 PM
Subject: RE: NRG request for information and data regarding in SEG record regarding NRG's Conemaugh and Keystone Stations

Hi Kristy,

I understand Ron has talked with Steve Frank at NRG about their desire for information on Conemaugh Station and Keystone to support a possible FDF request for Conemaugh FGD. We are reviewing your information request and Ron and Steve are planning to talk again this week.

Best,

Rob

Robert K. Wood, Director
Engineering and Analysis Division
U.S. EPA Office of Water
202-566-1822

From: Bulleit, Kristy [mailto:kbulleit@hunton.com]
Sent: Monday, March 28, 2016 1:43 PM
To: Wood, Robert <Wood.Robert@epa.gov>; Matuszko, Jan <Matuszko.Jan@epa.gov>; Jordan, Ronald <Jordan.Ronald@epa.gov>
Cc: 'McDermott, Martin (ENRD)' <Martin.McDermott@usdoj.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>; McHugh, Timothy L. <TMcHugh@hunton.com>; Bulleit, Kristy <kbulleit@hunton.com>
Subject: RE: NRG request for information and data regarding in SEG record regarding NRG's Conemaugh and Keystone Stations

Rob, I'm just following up to see whether you and your staff have had a chance to review and consider this request and, if so, whether EPA will be providing the requested information.

With best regards,

Kristy

From: Bulleit, Kristy

Sent: Tuesday, March 22, 2016 2:11 PM

To: Wood, Robert K. (wood.robert@epamail.epa.gov); Jan S. Matuszko (matuszko.jan@epa.gov); jordan.ronald@epa.gov

Cc: McDermott, Martin (ENRD); Levine.maryellen@epa.gov; Bulleit, Kristy; McHugh, Timothy L.

Subject: NRG request for information and data regarding in SEG record regarding NRG's Conemaugh and Keystone Stations

Importance: High

Rob, as I discussed with Martin McDermott and Mary Ellen Levine this morning, my client, NRG Energy, Inc. ("NRG") is seeking any and all portions of the record underlying the recently issued final Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category (the "ELG Rule") that relate to information from or about NRG's Conemaugh and/or Keystone Generating Stations and that have been withheld from the public rulemaking record as CBI. This request specifically includes any records produced by EPA, or others, that rely on information provided to any party by NRG or its subsidiaries.

EPA has made public much of the ELG Rule rulemaking record, but many of the records are heavily redacted on the basis that they contain confidential business information ("CBI"). Based on information that EPA has made available to the public, it is our understanding that these withheld records identify and discuss information about NRG's steam electric power generating plants that EPA considered when promulgating the ELG Rule.

NRG does not waive any CBI claims it may have at this time. Instead, NRG asks only that EPA share with it and its counsel those records or portions of records in the ELG Rule rulemaking record that contain or pertain to NRG's CBI regarding the Conemaugh and/or Keystone Generating Stations. NRG believes that this limited disclosure will be consistent with maintaining CBI claims and consents to EPA's disclosure without further analysis of that question.

Additionally, NRG expressly does **not** seek the disclosure of any other entities' CBI. If a

record or portion of a record contains NRG's and another entity's CBI, please redact those portions of the record that contain the other entity's CBI and disclose only those portions containing NRG's CBI. In the event it is not possible to segregate NRG's CBI in this fashion, please anonymize the other entity's CBI and disclose the record.

To guide you in your search for responsive records, we have identified three documents that should be included, as described above, in your response. First is EPA's Supplemental Costs and Loadings Documentation Memorandum, EPA-HQ-OW-2009-0819-5681, with a particular emphasis on appendices A1, A2, A8, A73, A75, A76, A78, A79, and A80. Second is EPA's Incremental Costs and Pollutant Removals for the Final Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, EPA-HQ-OW-2009-0819-6472. And, third, is EPA's CBI Final Steam Electrical Technical Questionnaire Database, EPA-HQ-OW-2009-0819-6230.

I would appreciate it if you would review this request and let me know as soon as possible whether EPA will be able to supply the requested information without the need for NRG to file a FOIA request and, if so, when EPA will provide the requested information.

Many thanks in advance for your assistance with this request. I look forward to hearing from you at your earliest convenience. If you need any further information, please do not hesitate to contact me.

Best regards,

Kristy

Kristy A. N. Bulleit
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Phone: 202/955-1547
Fax: 202/778-2201

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To: Johnson, Harry M. ("Pete") [pjohnson@hunton.com]
Cc: Kupchan, Simma [Kupchan.Simma@epa.gov]
From: McDermott, Martin (ENRD)
Sent: Thur 3/17/2016 4:36:47 PM
Subject: CBI letter/Steam Electric
canon8ba371 enrd doj gov Exchange 03-17-2016 12-30-59.pdf

Pete – please see attached letter. Thank you. Martin



U.S. Department of Justice

Environment and Natural Resources Division

Martin McDermott
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044

Telephone (202) 514-4122
Facsimile (202) 514-8865

March 17, 2016

Re: Response to Request for Disclosure of Information Withheld as Confidential Business Information From the Public Record for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category Final Rule

Dear Pete:

This letter responds to your letter of February 17, 2016, requesting that EPA disclose certain documents withheld as confidential business information ("CBI") related to analyses for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category Final Rule (the "Rule"). A careful review of the entire record demonstrates that EPA adequately explained its rationale for the Rule in documents that do not disclose information claimed as CBI. EPA is confident that the public record presents the methodologies and analyses the Agency used to reach its final determination in sufficient detail so that stakeholders as well as any reviewing court can consider whether the Agency's decisions were reasonable.

As noted in your letter, EPA removed from public view those documents that steam electric power generating facilities and others claimed as CBI. EPA is statutorily obligated to protect from disclosure all information claimed as CBI. *See Nat'l Wildlife Fed'n v. EPA*, 286 F.3d 554, 564-65 (D.C. Cir. 2002) ("EPA cannot be faulted for keeping [CBI] confidential" in a rulemaking record because CBI "may not be publicly disclosed" pursuant to CWA section 308(b).) The protocols that EPA used to identify and protect the CBI obtained or developed during this rulemaking are described in several documents in the record, including Section 3.8 of the publicly-available non-CBI version of Incremental Costs and Pollutant Removals for the Final Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category ("Costs and Pollutant Removals Report"). Document Control Number (DCN) SE05832; EPA-HQ-OW-2009-0819-6472. To prevent disclosing CBI, the Agency found it necessary to withhold from the public docket all information claimed as CBI as well as some additional data that, although not claimed as CBI, could inadvertently release CBI if made public. Where possible when dealing with CBI, EPA attempted to make information publicly available, using techniques such as aggregating certain data in the public docket, presenting

ranges of values, or masking plant identities to prevent CBI disclosure. The Agency's approach to protecting CBI ensures that the data in the public docket present the basis for the Rule and provide the opportunity for public comment, without compromising data confidentiality.

The public record contains a complete account of the methodologies and analyses underlying the Rule, notwithstanding EPA's protection of CBI. Your letter states that "the cost methodologies are a complete mystery" because EPA omitted 260 pages from the Costs and Pollutant Removals Report. Letter at 3. Yet your letter does not mention the "Non-CBI" version of the Costs and Pollutant Removals Report that EPA prepared for the proposed rule, which was available for review during the public comment period and remains publicly available. DCN SE03581; EPA-HQ-OW-2009-0819-2256; *see also* the Costs and Pollutant Removals Report for the Final Rule, DCN SE05832; EPA-HQ-OW-2009-0819-6472. These documents present the cost methodologies in great detail.

Other documents available to the public also discuss the cost methodologies used for the Rule. Section 9 of the Technical Development Document ("TDD") describes the cost methodologies used to analyze the technology options for each of the waste streams. DCN SE05904; EPA-HQ-OW-2009-0819-6432. Changes made to the cost estimates following proposal in response to public comments are presented in section V.D of the Federal Register notice for the final Rule. More detailed explanations of specific changes EPA made are included in EPA's comment response document, "Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category: EPA's Response to Public Comments" ("Comment Response Document"), *see, e.g.*, Comment Codes 10b, 14b and 16b. DCN SE05958; EPA-HQ-OW-2009-0819-6469. In addition, at the time of proposal EPA made available to power companies certain CBI and CBI-deductible data related to their power plants so that they could review the plant-specific input and output data used by EPA's models to estimate costs and pollutant removals.

Your letter also states that CBI redactions, particularly the redaction of the "Bottom Ash and Fly Ash Transport Water Pollutants of Concern (POC) Analysis Methodology" memorandum, "make it impossible for the public to know what criteria EPA employed to identify POCs for bottom ash and fly ash transport water." Letter at 3. On the contrary, the record contains ample documentation of the criteria EPA employed to identify pollutants of concern for bottom ash and fly ash transport water. Section 12 of the non-CBI version of the "Incremental Costs and Pollutant Removals for the Final Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category" provides a comprehensive description of the criteria employed. DCN SE05832; EPA-HQ-OW-2009-0819-6472. The criteria are presented elsewhere as well, including in Section 6.6.4 of the TDD, "Pollutants of Concern: Ash Transport Water POCs," and discussed in response to specific comments in Part 6 of the Comment Response Document.

Finally, the suggestion in your letter that EPA has "fail[ed] to disclose its methodologies" for calculating the flue gas desulfurization (FGD) wastewater limits is inaccurate. The methodologies EPA used to calculate the effluent limitations for FGD wastewater are carefully described in the Section 13 and Appendix B of the TDD. EPA's data and methodologies are also explained elsewhere in the record, including in the "Statistical Support Document: Effluent Limitations for FGD Wastewater, Gasification Wastewater, and Combustion Residual Leachate for the Final Steam Electric Power Generating Effluent Limitations Guidelines and Standards,"

DCN SE05733, EPA-HQ-OW-2009-0819-6430, and in response to specific comments in Comment Code 31 in the Comment Response Document.

In compiling the record for this Rule, EPA balanced the privacy claims of steam electric power generating facilities, as well as vendors and others who provided EPA valuable data, with its commitment to a transparent and accountable rulemaking process. Although EPA did not disclose every document submitted to the Agency in order to appropriately protect confidentiality, the thousands of documents accessible in the public record provide ample explanation of the Agency's decisions.

In light of the robust public record for this Rule, there is no reason to defer litigation over it. Now that the period for filing petitions for review has concluded, EPA plans to file a certified index to the record. The Agency hopes that challenges can proceed expeditiously in order to maximize both industry certainty and the Rule's benefits to public health and the environment.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin F. McDermott". The signature is fluid and cursive, with the first name "Martin" and last name "McDermott" clearly distinguishable.

Martin F. McDermott, Trial Attorney

To: Thomas Cmar[tcmar@earthjustice.org]; McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]; Levine, MaryEllen[levine.maryellen@epa.gov]; Zomer, Jessica[Zomer.Jessica@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; 'Sheehan, John A.'[JSheehan@ClarkHill.com]; Grever, Tom (SHB)[TGREVER@shb.com]; 'Sullivan, Sean M.'[Sean.Sullivan@troutmansanders.com]; joshua.smith@sierraclub.org[joshua.smith@sierraclub.org]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; Matthew Gerhart[mgerhart@earthjustice.org]
Cc: Bulleit, Kristy[kbulleit@hunton.com]
From: Johnson, Harry M. ("Pete")
Sent: Thur 4/28/2016 4:26:20 PM
Subject: RE: STEAM ELECTRIC REVISED BRIEFING SCHEDULE
[removed.txt](#)

All,

Please advise whether we are at an impasse and will need to file competing motions tomorrow. I hope we can avoid that.

As far as word counts, we believe our proposal is reasonable and appropriate. Unlike the other petitioners, we have proposed joint briefs for parties that are likely to have different arguments. Duke and City Utilities filed separate petitions for their own reasons. Rather than propose filing separate briefs, we and they agreed that it makes sense to combine our arguments into a joint brief. The word counts should account for this sharing.

Also, we do not have a problem with the various petitioners' briefs having the same limits on word counts. But, all of us are aware that, as a practical matter, the Industry Petitioners are likely to raise far more arguments about the ELG Rule than the other petitioners' groups.

We do not take issue with Thom's proposed language regarding responses to record motions.

Regards,

Pete



Harry M. Johnson, III

Partner

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Hunton & Williams LLP

hunton.com

From: Thomas Cmar [mailto:tcmar@earthjustice.org]

Sent: Thursday, April 28, 2016 12:51 AM

To: Johnson, Harry M. ("Pete"); McDermott, Martin (ENRD); Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; 'Sheehan, John A.'; Grever, Tom (SHB); 'Sullivan, Sean M.'; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Matthew Gerhart

Cc: Bulleit, Kristy

Subject: RE: STEAM ELECTRIC REVISED BRIEFING SCHEDULE

Pete, Martin, and all,

Environmental Petitioners support EPA's revised briefing schedule proposal, with one caveat: we reserve the right to respond to any record motion that is filed. Accordingly, we request that the language in the revised briefing schedule proposal that "EPA's Response to any Record Motion due 30 days after motion is filed" be changed to "Any responses to any Record Motion due 30 days after motion is filed."

Re: the length of Industry and Environmental Petitioners' briefs, our position is that Industry and Environmental Petitioners should have the same word limits. We also request that the allowable word length for intervenor briefs be at least half as long as the petitioners' briefs, to allow intervenor parties an adequate opportunity to respond to the petitioners' briefs.

We do not believe that Industry Petitioners have adequately justified their request for a 20,000-word opening brief and a 10,000-word reply brief. Industry Petitioners have not identified the specific issues that they intend to raise in their briefs that would justify the additional pages. In addition, we do not the Second Circuit 316(b) rule litigation as analogous to this case, in light of

the fact that the 316(b) case involves both Clean Water Act and Endangered Species Act issues and involves multiple federal agency respondents (EPA, FWS, and NMFS). The rationale in the 316(b) case for briefs that are double the length provided by FRAP 32(a)(7)(B) is not present in this case.

Thus, we support EPA's proposal that both Industry and Environmental Petitioners file opening briefs of no more than 17,500 words, reply briefs of no more than 8750 words, and intervenor briefs of no more than 8750 words.

Best,

Thom

From: Johnson, Harry M. ("Pete") [<mailto:pjohnson@hunton.com>]

Sent: Wednesday, April 27, 2016 4:48 PM

To: McDermott, Martin (ENRD); Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Thomas Cmar; 'Sheehan, John A.'; Grever, Tom (SHB); 'Sullivan, Sean M.'; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Matthew Gerhart

Cc: Bulleit, Kristy

Subject: RE: STEAM ELECTRIC REVISED BRIEFING SCHEDULE

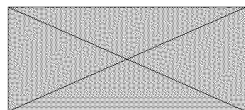
Martin, et al.,

Because the Industry Petitioners' joint brief will include the separate arguments of multiple parties (eg, Duke and City Utilities filed separate petitions), we continue to believe that 20,000 and 10,000 words, respectively, are necessary and appropriate for the IPs' opening and reply briefs. We had accepted your earlier suggested limit of 7500 words for intervenor briefs (this latest proposal increases them to 8750), and we strongly prefer to have the IPs' word count limits focus more on the opening and reply briefs. Our 20,000/10,000 proposal is still less than the 28,000/14,000 limits in the scheduling orders from the 2nd Circuit's 316(b) cases in 2006 and 2015.

Also, because of the nature of the expected motion(s) to complete the record, we do not feel 30 pages is sufficient. We can agree to drop our request to 35 pages.

Regards,

Pete



Harry M. Johnson, III

Partner

pjohnson@hunton.com

p 804.788.8784

[bio](#) | [vCard](#)

Hunton & Williams LLP

hunton.com

From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]

Sent: Wednesday, April 27, 2016 3:24 PM

To: Johnson, Harry M. ("Pete"); Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Bulleit, Kristy; Thomas Cmar; 'Sheehan, John A.'; Grever, Tom (SHB); 'Sullivan, Sean M.'; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Matthew Gerhart

Subject: STEAM ELECTRIC REVISED BRIEFING SCHEDULE

Dear Counsel – attached is a revised briefing schedule for your consideration. While EPA believes that the prior proposal allowed for sufficient word counts, in the interest of compromise we propose a schedule that allows Industry Petitioners and Environmental Petitioners to each file merits briefs (including intervenor briefs) totaling 35,000 words – 17,500 (opening) plus 8,750 (intervention) plus 8,750 (reply). EPA would, as before, maintain word count parity with the Petitioners. We left the timing unchanged.

As for the motions briefing, we propose a compromise of 50% increase over FRAP 27 page limits.

We also agree with Pete's suggestion that we include language about accommodating scheduling conflicts.

Please let me know if we can proceed on this basis. Martin

To: 'Johnson, Harry M. ("Pete")'[pjohnson@hunton.com]; McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]; Levine, MaryEllen[levine.maryellen@epa.gov]; Zomer, Jessica[Zomer.Jessica@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; 'Sheehan, John A.'[JSheehan@ClarkHill.com]; Grever, Tom (SHB)[TGREVER@shb.com]; 'Sullivan, Sean M.'[Sean.Sullivan@troutmansanders.com]; joshua.smith@sierraclub.org[joshua.smith@sierraclub.org]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; Matthew Gerhart[mgerhart@earthjustice.org]
Cc: Bulleit, Kristy[kbulleit@hunton.com]
From: Thomas Cmar
Sent: Thur 4/28/2016 4:51:00 AM
Subject: RE: STEAM ELECTRIC REVISED BRIEFING SCHEDULE
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Pete, Martin, and all,

Environmental Petitioners support EPA's revised briefing schedule proposal, with one caveat: we reserve the right to respond to any record motion that is filed. Accordingly, we request that the language in the revised briefing schedule proposal that "EPA's Response to any Record Motion due 30 days after motion is filed" be changed to "Any responses to any Record Motion due 30 days after motion is filed."

Re: the length of Industry and Environmental Petitioners' briefs, our position is that Industry and Environmental Petitioners should have the same word limits. We also request that the allowable word length for intervenor briefs be at least half as long as the petitioners' briefs, to allow intervenor parties an adequate opportunity to respond to the petitioners' briefs.

We do not believe that Industry Petitioners have adequately justified their request for a 20,000-word opening brief and a 10,000-word reply brief. Industry Petitioners have not identified the specific issues that they intend to raise in their briefs that would justify the additional pages. In addition, we do not the Second Circuit 316(b) rule litigation as analogous to this case, in light of the fact that the 316(b) case involves both Clean Water Act and Endangered Species Act issues and involves multiple federal agency respondents (EPA, FWS, and NMFS). The rationale in the 316(b) case for briefs that are double the length provided by FRAP 32(a)(7)(B) is not present in this case.

Thus, we support EPA's proposal that both Industry and Environmental Petitioners file opening briefs of no more than 17,500 words, reply briefs of no more than 8750 words, and intervenor briefs of no more than 8750 words.

Best,

Thom

From: Johnson, Harry M. ("Pete") [mailto:pjohnson@hunton.com]
Sent: Wednesday, April 27, 2016 4:48 PM
To: McDermott, Martin (ENRD); Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Thomas Cmar; 'Sheehan, John A.'; Grever, Tom (SHB); 'Sullivan, Sean M.'; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Matthew Gerhart
Cc: Bulleit, Kristy
Subject: RE: STEAM ELECTRIC REVISED BRIEFING SCHEDULE

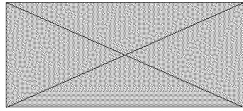
Martin, et al.,

Because the Industry Petitioners' joint brief will include the separate arguments of multiple parties (eg, Duke and City Utilities filed separate petitions), we continue to believe that 20,000 and 10,000 words, respectively, are necessary and appropriate for the IPs' opening and reply briefs. We had accepted your earlier suggested limit of 7500 words for intervenor briefs (this latest proposal increases them to 8750), and we strongly prefer to have the IPs' word count limits focus more on the opening and reply briefs. Our 20,000/10,000 proposal is still less than the 28,000/14,000 limits in the scheduling orders from the 2nd Circuit's 316(b) cases in 2006 and 2015.

Also, because of the nature of the expected motion(s) to complete the record, we do not feel 30 pages is sufficient. We can agree to drop our request to 35 pages.

Regards,

Pete



Harry M. Johnson, III

Partner

p 804.788.8784

[bio](#) | [vCard](#)

Hunton & Williams LLP

[hunton.com](#)

From: McDermott, Martin (ENRD) [mailto:Martin.McDermott@usdoj.gov]

Sent: Wednesday, April 27, 2016 3:24 PM

To: Johnson, Harry M. ("Pete"); Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Bulleit, Kristy; Thomas Cmar; 'Sheehan, John A.'; Grever, Tom (SHB); 'Sullivan, Sean M.'; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Matthew Gerhart

Subject: STEAM ELECTRIC REVISED BRIEFING SCHEDULE

Dear Counsel – attached is a revised briefing schedule for your consideration. While EPA believes that the prior proposal allowed for sufficient word counts, in the interest of compromise we propose a schedule that allows Industry Petitioners and Environmental Petitioners to each file merits briefs (including intervenor briefs) totaling 35,000 words – 17,500 (opening) plus 8,750 (intervention) plus 8,750 (reply). EPA would, as before, maintain word count parity with the Petitioners. We left the timing unchanged.

As for the motions briefing, we propose a compromise of 50% increase over FRAP 27 page limits.

We also agree with Pete's suggestion that we include language about accommodating scheduling conflicts.

Please let me know if we can proceed on this basis. Martin

To: McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]; Grever, Tom (SHB)[TGREVER@shb.com]; Thomas Cmar[tmar@earthjustice.org]; Sheehan, John A.[JSheehan@ClarkHill.com]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; Sullivan, Sean M.[Sean.Sullivan@troutmansanders.com]; mgerhart@earthjustice.org[mgerhart@earthjustice.org]
Cc: Kupchan, Simma[Kupchan.Simma@epa.gov]; Levine, MaryEllen[levine.maryellen@epa.gov]; Bulleit, Kristy[kbulleit@hunton.com]
From: Johnson, Harry M. ("Pete")
Sent: Thur 3/24/2016 10:57:11 PM
Subject: RE: STEAM ELECTRIC ABEYANCE MOTION
[removed.txt](#)

Martin,

Conceptually, continuing the stay to seek agreement upon a scheduling order is acceptable, but we have concerns about the current form of the motion because of our dispute about the contents of the public record.

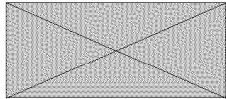
Kristy's and my clients would be willing to agree to hold the case in abeyance while the parties work on a scheduling order. However, we believe the scheduling order should set a date for EPA to file the certified index to the record, then allow a short time (maybe 14 days) for the parties to file any motions regarding the record. Deadlines for filing briefs should be triggered by final resolution of those motions. The draft motion to continue the stay would need to reflect this expectation in some fashion.

For instance, petitioners' briefs could be due 90 days after all the record issues are fully resolved. If the court denies the motions regarding the record, the petitioners' briefs would be due 90 days from entry of the court's order. If, on the other hand, the court gives EPA, say, 30 days to produce unredacted versions of certain documents, the 90-day period would run from the date EPA complies.

I also suspect that April 8 is too aggressive. We have several latecomers to the case and lots of counsel, so the scheduling order may take more than 2 weeks to hammer out, especially if some are taking vacations. I would suggest April 15.

Regards,

Pete



Harry M. Johnson, III

Partner

pjohnson@hunton.com

p 804.788.8784

[bio](#) | [vCard](#)

Hunton & Williams LLP

hunton.com

From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]
Sent: Wednesday, March 23, 2016 1:40 PM
To: Johnson, Harry M. ("Pete"); Grever, Tom (SHB); Thomas Cmar; Sheehan, John A.; casey.roberts@sierraclub.org; Sullivan, Sean M.; mgerhart@earthjustice.org
Cc: Kupchan, Simma; Levine, MaryEllen; Bulleit, Kristy
Subject: RE: STEAM ELECTRIC ABEYANCE MOTION

Pete (and others) – I am checking with EPA on the record index preparation. In the short term, I would like to get something on file to let the clerk know that the parties are working on a motion to govern. Is the draft abeyance motion acceptable? Martin

From: Johnson, Harry M. ("Pete") [<mailto:pjohnson@hunton.com>]
Sent: Wednesday, March 23, 2016 11:41 AM
To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>; Grever, Tom (SHB) <TGREVER@shb.com>; Thomas Cmar <tcmar@earthjustice.org>; Sheehan, John A. <JSheehan@ClarkHill.com>; casey.roberts@sierraclub.org; Sullivan, Sean M. <Sean.Sullivan@troutmansanders.com>; mgerhart@earthjustice.org
Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>; Bulleit, Kristy <kbulleit@hunton.com>
Subject: RE: STEAM ELECTRIC ABEYANCE MOTION

Martin,

Kristy and I are discussing these issues with our clients now, and we will get back to you asap. As you know, we have issues with the public record for the rule and are likely to file a motion in that regard, so I strongly suspect we will want that issue addressed in any case management order/briefing schedule. Do you have an idea as to when you will be filing the index to the certified record?

Thanks,

Pete



Harry M. Johnson, III

Partner

pjohnson@hunton.com

p 804.788.8784

[bio](#) | [vCard](#)

Hunton & Williams LLP

hunton.com

From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]

Sent: Tuesday, March 22, 2016 12:52 PM

To: Bulleit, Kristy; Johnson, Harry M. ("Pete"); Grever, Tom (SHB); Thomas Cmar; Sheehan, John A.; casey.roberts@sierraclub.org; Sullivan, Sean M.; mgerhart@earthjustice.org

Cc: Kupchan, Simma; Levine, MaryEllen

Subject: STEAM ELECTRIC ABEYANCE MOTION

Counsel – please advise if you consent to the attached procedural motion. The clerk is looking for this to be filed soon. Also, it would be helpful if you could send me an email letting me know (1) whether you intend to file jointly with others, and if so, with whom; (2) the date that you

would propose for filing your opening brief; (3) proposed word counts for the foregoing, for any intervenor brief, and for any reply; and (4) any other matter you believe might be appropriate to include in a motion to govern. Also, if I've inadvertently left anyone off this email distribution or off the motion, please let me know. Thanks. Martin

To: Bulleit, Kristy[kbulleit@hunton.com]; Johnson, Harry M. ("Pete")[pjohnson@hunton.com]; Grever, Tom (SHB)[TGREVER@shb.com]; Thomas Cmar[tcmar@earthjustice.org]; Sheehan, John A.[JSheehan@ClarkHill.com]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; Sullivan, Sean M.[Sean.Sullivan@troutmansanders.com]; mgerhart@earthjustice.org[mgerhart@earthjustice.org]; joshua.smith@sierraclub.org[joshua.smith@sierraclub.org]
Cc: Levine, MaryEllen[levine.maryellen@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]
From: McDermott, Martin (ENRD)
Sent: Tue 3/22/2016 9:05:20 PM
Subject: STEAM ELECTRIC
ENV DEFENSE-#760093-v1-
STEAM_ELECTRIC_ABEYANCE_MOTION_REVISIED_MARCH_22_DRAFT(tc).docx

Counsel – here is the draft motion I sent earlier today, with corrections to the environmental parties' signature blocks and corrections to the references in Para. 2 to the 7th and 8th Circuit filings (which were reversed). Please let me know your positions/comments on this draft.
Thanks. Martin

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 15-60821

SOUTHWESTERN ELECTRIC POWER COMPANY, et al.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.,
Respondents.

Petitions for Review of a Final Rule issued by the
United States Environmental Protection Agency

**JOINT MOTION TO HOLD CONSOLIDATED CASES IN FURTHER ABEYANCE
PENDING SUBMISSION OF MOTION TO GOVERN FURTHER PROCEEDINGS**

Petitioners and Respondents in these seven consolidated cases hereby jointly move the Court to continue to hold these consolidated cases in abeyance pending the parties' submission of a motion to govern further proceedings. In support hereof, the parties state the following:

1. On January 8, 2016, Respondent EPA, together with Petitioners and Intervenor in the original four consolidated cases, moved for an order holding the cases in abeyance and staying all proceedings therein – including any deadlines for filing the administrative record, appendix, and merits briefs – until after the expiration of the 120-day statutory deadline (March 16, 2016) for filing judicial challenges to the rule at issue: “Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category” (“the Challenged Rule” or “Rule”). 80 Fed. Reg. 67,838 (Nov. 3, 2015). The Court granted that abeyance motion on January 15, 2016.

2. Thereafter, prior to expiration of the 120-day deadline, three additional petitions seeking judicial review of the Rule were filed and subsequently consolidated for adjudication by this Court: one by American Water Works Association and National Association of Water Companies (filed in this Court); a second by City of Springfield, Missouri (originally filed in the Eighth Circuit but now transferred to this Court); and a third by Duke Energy Indiana, Inc. (originally filed in the Seventh Circuit but now transferred to this Court).
3. The parties request the opportunity to craft a joint motion to govern further proceedings, addressing the parties' proposals for: (1) the date for EPA to file the certified index to the administrative record, which is voluminous; (2) the consolidation of briefing by the parties, to minimize the burden on the Court; (3) the dates for the filing of the parties' proof briefs, the joint deferred appendix, and the final briefs; (4) word counts for briefs; and (5) such other matters as may be necessary or appropriate under the circumstances.
4. The parties request that the Court issue an order setting April 8, 2016 as the filing date for said joint motion to govern further proceedings.

Dated: March *, 2016

Respectfully submitted by:

/s/ Martin F. McDermott

Martin F. McDermott
United States Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
601 D Street, N.W., Suite 8000
Washington, D.C. 20004
202-514-4122 (tel)
martin.mcdermott@usdoj.gov
Counsel for Respondent EPA

/s/ Kristy A.N. Bulleit

Kristy A.N. Bulleit
Hunton & Williams LLP
2200 Pennsylvania Avenue, N.W.
Washington, D.C. 20037-1709

202-955-1547 (tel.)

kbulleit@hunton.com

*Counsel for Petitioner/Intervenor Utility Water Act
Group and Southwestern Electric Power Company*

/s/ Harry M. Johnson, III

Harry M. Johnson, III

Hunton & Williams LLP

Riverfront Plaza, East Tower

951 East Byrd Street

Richmond, VA 23219-4074

804-788-8200 (tel.)

pjohnson@hunton.co

*Counsel for Petitioner/Intervenor Utility Water Act
Group and Union Electric Company*

/s/ Thomas J. Cmar

Thomas J. Cmar

Earthjustice

1101 Lake Street, Suite 405B

Oak Park, IL 60301

312-257-9338 (tel.)

tcmar@earthjustice.org

*Counsel for Petitioner/Intervenors Sierra Club,
Environmental Integrity Project and Waterkeeper
Alliance, Inc., and for Intervenor Clean Water
Action*

/s/ Matthew Gerhart

Matthew Gerhart

Earthjustice

705 Second Ave., Suite 203

Seattle, WA 98104

206-343-7340 (tel.)

mgerhart@earthjustice.org

*Counsel for Petitioner/Intervenors Sierra Club,
Waterkeeper Alliance, Inc. and Environmental
Integrity Project, and for Intervenor Clean Water
Action*

/s/ Casey Roberts

Casey Roberts

Sierra Club

85 Second Street, Second Floor

San Francisco, CA 94105-3441

415-977-5710 (tel.)

casey.roberts@sierraclub.org
Counsel for Petitioner/Intervenor Sierra Club

/s/ Joshua Smith
Joshua Smith
Sierra Club
85 Second Street, Second Floor
San Francisco, CA 94105-3441
415-977-5560 (tel.)
joshua.smith@sierraclub.org
Counsel for Petitioner/Intervenor Sierra Club

/s/ Thomas J. Grever
Thomas J. Grever
Shook, Hardy & Bacon, L.L.P.
2555 Grand Boulevard
Kansas City, MO 64108-2613
816-559-2375 (tel.)
tgrever@shb.com
*Counsel for Petitioner City of Springfield, Missouri,
by and through the Board of Public Utilities*

/s/ John A. Sheehan
John A. Sheehan
Clark Hill PLC
601 Pennsylvania Ave., NW
Suite 1000
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202-572-8665 (tel.)
jsheehan@clarkhill.com
*Counsel for American Water Works Association
and National Association of Water Companies*

/s/ Sean M. Sullivan
Sean M. Sullivan
Troutman Sanders LLP
434 Fayetteville Street, Suite 1900
Raleigh, NC 27601
919-835-4173 (tel.)
sean.sullivan@troutmansanders.com
Counsel for Petitioner Duke Energy Indiana, Inc.

CERTIFICATE OF SERVICE

I certify that on March *, 2016, a true and correct copy of the foregoing **JOINT MOTION TO HOLD CONSOLIDATED CASES IN FURTHER ABEYANCE PENDING SUBMISSION OF MOTION TO GOVERN FURTHER PROCEEDINGS** was filed through the Court's ECF system, and thereby served on all counsel of record for Petitioners in the consolidated cases.

/s/ Martin F. McDermott
Martin F. McDermott
Attorney for Respondents

To: Kupchan, Simma[Kupchan.Simma@epa.gov]
Cc: Bulleit, Kristy[kbulleit@hunton.com]; Aldridge, Elizabeth[ealdridge@hunton.com]
From: Bulleit, Kristy
Sent: Tue 3/15/2016 10:29:52 PM
Subject: RE: Steam Electric Power

Thanks, Simma. I'm working on getting a detailed description from those trying to reproduce the calculations, and I'll send it along as soon as I have it.

Best regards,

Kristy

From: Kupchan, Simma [mailto:Kupchan.Simma@epa.gov]
Sent: Monday, March 14, 2016 5:05 PM
To: Bulleit, Kristy
Subject: FW: Steam Electric Power

Kristy,

Martin forwarded me your email exchange. My clients would be happy to meet with you. Before scheduling it, they wanted to get a sense of which calculations you would like them to walk you all through, so that they know how long they'd need to prepare and who would need to attend on our end. Could you let me know?

(I will be at an offsite meeting most of this week, so you may get an away message, but will be checking email sporadically and will be able to respond.

Thanks very much,

Simma Kupchan

Water Law Office

US EPA Office of General Counsel

William Jefferson Clinton Building North Room 7426Q

(p) 202-564-3105

From: Bulleit, Kristy [<mailto:kbulleit@hunton.com>]
Sent: Monday, March 14, 2016 3:54 PM
To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>
Cc: Bulleit, Kristy <kbulleit@hunton.com>
Subject: RE: Steam Electric Power

Thanks very much.

From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]
Sent: Monday, March 14, 2016 3:52 PM
To: Bulleit, Kristy
Subject: RE: Steam Electric Power

I haven't forgotten about you. I have a call in and am waiting for a call back. Martin

From: Bulleit, Kristy [<mailto:kbulleit@hunton.com>]
Sent: Monday, March 14, 2016 3:36 PM
To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>
Subject: RE: Steam Electric Power

Hello, Martin. Hope you had a good weekend, despite the rain. Any chance you've been able to reach anyone at EPA about our meeting request?

From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]
Sent: Friday, March 11, 2016 2:37 PM
To: Bulleit, Kristy

Subject: RE: Steam Electric Power

Kristy – I can't reach anyone on point at EPA. I will get back to you early next week. Thanks.
Martin

From: Bulleit, Kristy [<mailto:kbulleit@hunton.com>]
Sent: Friday, March 11, 2016 1:31 PM
To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>
Cc: Bulleit, Kristy <kbulleit@hunton.com>; Aldridge, Elizabeth <ealdrige@hunton.com>;
Johnson, Harry M. ("Pete") <pjohnson@hunton.com>
Subject: RE: Steam Electric Power
Importance: High

Sure. Most urgently, we want to talk to EPA about:

(1) the establishment of applicability dates in permits undergoing renewal in the next few months, and

(2) how the agency made certain calculations that we haven't been able to reproduce but probably will be able to if someone just walks our techies through the spreadsheet of data supplied in the record.

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Sent: Friday, March 11, 2016 1:15 PM
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Subject: RE: Steam Electric Power

Kristy – I'm actually working on a tight briefing schedule on another matter. Would you mind sending me an email briefly noting the topics of interest and I will get back to you? Martin

From: Bulleit, Kristy [<mailto:kbulleit@hunton.com>]
Sent: Friday, March 11, 2016 1:09 PM
To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>
Subject: RE: Steam Electric Power

An so I guess I should ask – may we set up this meeting as soon as possible? If you'd like to discuss the topics, feel free to give me a call.

From: Bulleit, Kristy
Sent: Friday, March 11, 2016 1:01 PM
To: 'McDermott, Martin (ENRD)'
Subject: RE: Steam Electric Power

Of course, Martin, happy to oblige. My apologies if I overstepped. But assume that my client may call any time, correct?

From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]
Sent: Friday, March 11, 2016 11:55 AM
To: Bulleit, Kristy
Subject: Steam Electric Power

Kristy – I understand that you've contacted EPA to discuss some issues pertaining to the steam electric rule. Given that we are in litigation, I would appreciate it if (at least at this juncture) you would run any meeting requests by me or OGC. Thanks. Martin

To: kbulleit@hunton.com[kbulleit@hunton.com]
From: Kupchan, Simma
Sent: Mon 3/14/2016 9:04:36 PM
Subject: FW: Steam Electric Power

Kristy,

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Simma Kupchan

Water Law Office

US EPA Office of General Counsel

William Jefferson Clinton Building North Room 7426Q

(p) 202-564-3105

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Sent: Monday, March 14, 2016 3:54 PM
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Cc: Bulleit, Kristy <kbulleit@hunton.com>; Aldridge, Elizabeth <caldrige@hunton.com>; Johnson, Harry M. ("Pete") <pjohnson@hunton.com>
Subject: RE: Steam Electric Power
Importance: High

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(1) the establishment of applicability dates in permits undergoing renewal in the next few months, and

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Subject: RE: Steam Electric Power

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Subject: RE: Steam Electric Power

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To: Bulleit, Kristy[kbulleit@hunton.com]
Cc: Zomer, Jessica[Zomer.Jessica@epa.gov]; McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]
From: Levine, MaryEllen
Sent: Mon 12/7/2015 3:44:36 PM
Subject: Steam Electric petitions for review.

Hi Kristy, I just received your voicemail.

Martin McDermott is our DoJ attorney on the steam electric petitions for review.

- **Mary Ellen**

Mary Ellen Levine

Assistant General Counsel

Water Law Office, Office of General Counsel

7510 C WJC North

(202) 564-5487

To: 'McDermott, Martin (ENRD)'[Martin.McDermott@usdoj.gov]; Johnson, Harry M. ("Pete") [pjohnson@hunton.com]; Levine, MaryEllen [levine.maryellen@epa.gov]; Zomer, Jessica [Zomer.Jessica@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; 'Sheehan, John A.' [JSheehan@ClarkHill.com]; Grever, Tom (SHB) [TGREVER@shb.com]; 'Sullivan, Sean M.' [Sean.Sullivan@troutmansanders.com]; joshua.smith@sierraclub.org [joshua.smith@sierraclub.org]; casey.roberts@sierraclub.org [casey.roberts@sierraclub.org]; Matthew Gerhart [mgerhart@earthjustice.org]; Bulleit, Kristy [kbulleit@hunton.com]
From: Thomas Cmar
Sent: Fri 4/29/2016 7:09:56 PM
Subject: RE: STEAM ELECTRIC MOTION TO GOVERN APRIL 29, 2016 SECOND DRAFT

Environmental Petitioners consent to this filing. Thanks, Martin, for shepherding this through.

From: McDermott, Martin (ENRD) [mailto:Martin.McDermott@usdoj.gov]
Sent: Friday, April 29, 2016 1:56 PM
To: Johnson, Harry M. ("Pete"); Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Thomas Cmar; 'Sheehan, John A.'; Grever, Tom (SHB); 'Sullivan, Sean M.'; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Matthew Gerhart; Bulleit, Kristy
Subject: STEAM ELECTRIC MOTION TO GOVERN APRIL 29, 2016 SECOND DRAFT

Counsel -- Revised with Pete's comments. For those who have yet to sign off, please let me know if I may file on your behalf. Martin

To: Johnson, Harry M. ("Pete") [pjohnson@hunton.com]; Levine, MaryEllen [levine.maryellen@epa.gov]; Zomer, Jessica [Zomer.Jessica@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Thomas Cmar [tcmar@earthjustice.org]; 'Sheehan, John A.' [JSheehan@ClarkHill.com]; Grever, Tom (SHB) [TGREVER@shb.com]; 'Sullivan, Sean M.' [Sean.Sullivan@troutmansanders.com]; joshua.smith@sierraclub.org [joshua.smith@sierraclub.org]; casey.roberts@sierraclub.org [casey.roberts@sierraclub.org]; Matthew Gerhart [mgerhart@earthjustice.org]; Bulleit, Kristy [kbulleit@hunton.com]
From: McDermott, Martin (ENRD)
Sent: Fri 4/29/2016 6:56:24 PM
Subject: STEAM ELECTRIC MOTION TO GOVERN APRIL 29, 2016 SECOND DRAFT
ENV DEFENSE-#764503-v1-
STEAM_ELECTRIC_MOTION_TO_GOVERN_APRIL_29__2016_DRAFT.docx

Counsel -- Revised with Pete's comments. For those who have yet to sign off, please let me know if I may file on your behalf. Martin

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 15-60821

SOUTHWESTERN ELECTRIC POWER COMPANY, et al.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.,
Respondents.

Petitions for Review of a Final Rule issued by the
United States Environmental Protection Agency

JOINT MOTION TO GOVERN FURTHER PROCEEDINGS

The parties in these seven consolidated cases – Petitioners/Intervenors Utility Water Act Group (“UWAG”), Southwestern Electric Power Company (“SWEPCo”), and Union Electric Company, doing business as Ameren Missouri (“Union Electric”); Petitioner City of Springfield, Missouri, by and through the Board of Public Utilities (“City Utilities of Springfield”); Petitioner Duke Energy Indiana, Inc. (“Duke Energy”); Petitioners American Water Works Association (“AWWA”) and National Association of Water Companies (“NAWC”); Petitioners/Intervenors Sierra Club, Waterkeeper Alliance, Inc., Environmental Integrity Project, and Intervenor Clean Water Action (collectively, “Environmental Petitioners”); and Respondents the United States Environmental Protection Agency (“EPA”) and Gina McCarthy, in her official capacity as EPA Administrator – hereby jointly submit the following proposal to govern further proceedings. As reflected below, the parties reached agreement on the briefing schedule for this matter and respectfully request that the Court issue an order adopting the parties’ proposals for the efficient

resolution of these consolidated cases.

Background:

On January 8, 2016, Respondent EPA, together with Petitioners and Intervenor in the original four consolidated cases, moved for an order holding the cases in abeyance and staying all proceedings therein – including any deadlines for filing the administrative record, appendix, and merits briefs – until after the expiration of the 120-day statutory deadline (March 16, 2016) for filing judicial challenges to the rule at issue, “Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category” (“the Challenged Rule” or “Rule”), 80 Fed. Reg. 67,838 (Nov. 3, 2015).

After this Court granted that abeyance motion, the parties moved for an order holding the cases in further abeyance until the parties could craft a joint motion to govern further proceedings addressing proposals for: (1) the date for EPA to file the Certified Index to the Administrative Record, which is voluminous; (2) the consolidation of briefing by the parties, to minimize the burden on the Court; (3) the filing and resolution of any motion regarding the completeness of the Administrative Record; (4) the dates for the filing of the parties’ proof briefs, the joint deferred appendix, and the final briefs; (5) word counts for briefs; and (6) such other matters as may be necessary or appropriate under the circumstances. This Court agreed to hold this matter in further abeyance and directed the parties to submit this motion to govern by April 29, 2016.

Proposed Schedule:

The parties respectfully submit the following proposal for the briefing and resolution of this case and request the Court to adopt it. The parties believe this schedule is appropriate because this consolidated case encompasses seven separate petitions for review of a far-reaching

rulemaking, has a voluminous record, has numerous parties with different interests, and presents many complex issues.

1. Certified Index to the Administrative Record: EPA to file the Certified Index 30 days from date this Court enters its Scheduling Order pursuant hereto.
2. Motion Regarding Completeness of Certified Index: Petitioners UWAG, Union Electric and SWEPCo intend to file a motion (“Record Motion”) regarding the completeness of EPA’s Certified Index. The due date for the Record Motion will be 14 days after EPA files the Certified Index. Movants’ opening brief will be limited to 35 pages; EPA’s response to 35 pages; and movants’ optional reply to 15 pages. EPA’s response to the Record Motion will be due 30 days after the motion is filed; any reply will be due 14 days thereafter. Environmental Petitioners have advised that they wish to reserve the right to file a response to the Record Motion on the same date and with the same page limit as EPA’s response; EPA reserves the right to contest whether Environmental Petitioners are entitled to file such response.
3. Consolidated Merits Briefs. UWAG, SWEPCo, Union Electric, Duke Energy, and City Utilities of Springfield (collectively, “Industry Petitioners”) agree to file joint merits briefs; Environmental Petitioners agree to file joint merits briefs; and AWWA and NAWC agree to file joint merits briefs.
4. Timing and Page Limits for Joint Proof Briefs: All Petitioners’ opening merits proof briefs will be due 75 days from judicial Resolution of any Record Motion. (“Resolution” is defined as EPA compliance with any Court order on the Record Motion or, if the Record Motion is denied or referred to the merits panel, from the date that this Court denies or refers the Record Motion to the merits panel.) Opening briefs of Industry Petitioners and of Environmental Petitioners are limited to 18,000 words, and replies limited to 9,000 words; opening brief of

AWWA/NAWC is limited to 9,000 words, and reply to 4,500 words. EPA's single consolidated response brief will be due 120 days after Petitioners' opening briefs are filed, and will be limited to the sum total word count allotted to all Petitioners' opening briefs. Petitioners' replies will be due 30 days after EPA's response brief is filed.

5. Amicus Briefs: Any such briefs will be governed by Fed. R. App. P. 29.

6. Intervenors' Briefs: Intervenor Briefs will be due 30 days after EPA's response brief is filed, and are limited to 9,000 words.

7. Deferred Joint Appendix ("JA"): The JA will be due 21 days after Reply Briefs are filed.

8. Final Briefs: Final merits briefs (with JA cites) will be due 14 days after the JA is filed.

9. Schedule Conflicts: The parties respectfully request that the Scheduling Order include language to the following effect: "To the extent that briefing deadlines ultimately fall over holidays or create other unavoidable scheduling conflicts, the parties will consider in good faith agreeing to move jointly for minor modifications to the deadlines to reasonably accommodate schedules."

Dated: April 29, 2016

Respectfully submitted by:

/s/ Martin F. McDermott

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Environment & Natural Resources Division
Environmental Defense Section
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Counsel for Respondent EPA

/s/ Kristy A.N. Bulleit

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Group and Southwestern Electric Power Company*

/s/ Harry M. Johnson, III

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*Counsel for Petitioner/Intervenors Utility Water Act
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/s/ Thomas J. Cmar

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*Counsel for Petitioner/Intervenors Sierra Club,
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Action*

/s/ Matthew Gerhart

Matthew Gerhart

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Denver, CO 80202

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mgerhart@earthjustice.org

*Counsel for Petitioner/Intervenors Sierra Club,
Waterkeeper Alliance, Inc. and Environmental
Integrity Project, and for Intervenor Clean Water
Action*

/s/ Casey Roberts

Casey Roberts

Sierra Club

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/s/ Joshua Smith
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Counsel for Petitioner/Intervenor Sierra Club

/s/ Thomas J. Grever
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tgrever@shb.com
*Counsel for Petitioner City of Springfield, Missouri,
by and through the Board of Public Utilities*

/s/ John A. Sheehan
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jsheehan@clarkhill.com
*Counsel for Petitioners American Water Works
Association and National Association of Water Cos.*

/s/ Sean M. Sullivan
Sean M. Sullivan
Troutman Sanders LLP
434 Fayetteville Street, Suite 1900
Raleigh, NC 27601
919-835-4173 (tel.)
sean.sullivan@troutmansanders.com
Counsel for Petitioner Duke Energy Indiana, Inc.

CERTIFICATE OF SERVICE

I certify that on April 29, 2016, a true and correct copy of the foregoing **JOINT MOTION TO GOVERN FURTHER PROCEEDINGS** was filed through the Court's ECF system, and thereby served on all counsel of record for Petitioners in the consolidated cases.

/s/ Martin F. McDermott

Martin F. McDermott

Attorney for Respondents

To: Sullivan, Sean M.[Sean.Sullivan@troutmansanders.com]; 'Johnson, Harry M. ("Pete")'[pjohnson@hunton.com]; McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]; Levine, MaryEllen[levine.maryellen@epa.gov]; Zomer, Jessica[Zomer.Jessica@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Thomas Cmar[tcmr@earthjustice.org]; Grever, Tom (SHB)[TGREVER@shb.com]; joshua.smith@sierraclub.org[joshua.smith@sierraclub.org]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; Matthew Gerhart[mgerhart@earthjustice.org]
Cc: Bulleit, Kristy[kbulleit@hunton.com]
From: Sheehan, John A.
Sent: Fri 4/29/2016 6:27:44 PM
Subject: RE: STEAM ELECTRIC MOTION TO GOVERN APRIL 29, 2016 DRAFT
removed.txt

The American Water Works Association and the National Association of Water Companies consent to the motion.

Thanks.

John A. Sheehan

CLARK HILL PLC
202.572.8665 (direct) | 202.572.8687 (fax) | Ex. 6 - Personal Privacy | Cell)
jsheehan@clarkhill.com | www.clarkhill.com

From: Sullivan, Sean M. [mailto:Sean.Sullivan@troutmansanders.com]
Sent: Friday, April 29, 2016 2:14 PM
To: 'Johnson, Harry M. ("Pete")'; McDermott, Martin (ENRD); Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Thomas Cmar; Sheehan, John A.; Grever, Tom (SHB); joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Matthew Gerhart
Cc: Bulleit, Kristy
Subject: RE: STEAM ELECTRIC MOTION TO GOVERN APRIL 29, 2016 DRAFT

All –

Subject to Pete's comments below, Duke Energy Indiana consents to the motion.

Sean M. Sullivan

Troutman Sanders LLP

434 Fayetteville Street, Suite 1900

Raleigh, NC 27601

Office: (919) 835-4173

Cell: Ex. 6 - Personal Privacy

sean.sullivan@troutmansanders.com

From: Johnson, Harry M. ("Pete") [<mailto:pjohnson@hunton.com>]

Sent: Friday, April 29, 2016 1:54 PM

To: McDermott, Martin (ENRD); Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Thomas Cmar; 'Sheehan, John A.'; Grever, Tom (SHB); Sullivan, Sean M.; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Matthew Gerhart

Cc: Bulleit, Kristy

Subject: RE: STEAM ELECTRIC MOTION TO GOVERN APRIL 29, 2016 DRAFT

Martin,

One limited substantive comment, and 2 very small nits:

Substance:

1. In the Paragraph entitled "Proposed Schedule," we would modify it to add some justification for the request:

“The parties respectfully submit the following proposal for the briefing and resolution of this case and request the Court to adopt it. The parties believe this schedule is appropriate because this consolidated case encompasses seven separate petitions for review of a far-reaching rulemaking, has a voluminous record, has numerous parties with different interests, and presents many complex issues.”

Nits:

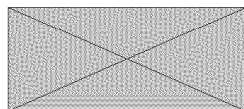
-

1. In Para 2, need to add Union Electric: “Motion Regarding Completeness of Certified Index: Petitioners UWAG, Union Electric and SWEPCo intend to file a motion (“Record Motion”) regarding the completeness of EPA’s Certified Index....”

2. In Para 3, there is an extra hyphen in “Union-Electric” that should be removed.

Thanks,

Pete



Harry M. Johnson, III

Partner

pjohnson@hunton.com

p 804.788.8784

[bio](#) | [vCard](#)

Hunton & Williams LLP

hunton.com

From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]

Sent: Friday, April 29, 2016 12:28 PM

To: Johnson, Harry M. ("Pete"); Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Thomas Cmar; 'Sheehan, John A.'; Grever, Tom (SHB); 'Sullivan, Sean M.'; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Matthew Gerhart; Bulleit, Kristy

Subject: STEAM ELECTRIC MOTION TO GOVERN APRIL 29, 2016 DRAFT

Counsel – attached is the proposed draft motion to govern. Please let me know if you have any comments, or if it is acceptable for filing. Thanks for your cooperation on getting this done. Best,
Martin

This e-mail communication (including any attachments) may contain legally privileged and confidential information intended solely for the use of the intended recipient. If you are not the intended recipient, you should immediately stop reading this message and delete it from your system. Any unauthorized reading, distribution, copying or other use of this communication (or its attachments) is strictly prohibited.

To: Johnson, Harry M. ("Pete")[pjohnson@hunton.com]; Levine, MaryEllen[levine.maryellen@epa.gov]; Zomer, Jessica[Zomer.Jessica@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Thomas Cmar[tcmar@earthjustice.org]; 'Sheehan, John A.'[JSheehan@ClarkHill.com]; Grever, Tom (SHB)[TGREVER@shb.com]; 'Sullivan, Sean M.'[Sean.Sullivan@troutmansanders.com]; joshua.smith@sierraclub.org[joshua.smith@sierraclub.org]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; Matthew Gerhart[mgerhart@earthjustice.org]; Bulleit, Kristy[kbulleit@hunton.com]
From: McDermott, Martin (ENRD)
Sent: Fri 4/29/2016 4:27:51 PM
Subject: STEAM ELECTRIC MOTION TO GOVERN APRIL 29, 2016 DRAFT
ENV DEFENSE-#764503-v1-
STEAM_ELECTRIC_MOTION_TO_GOVERN_APRIL_29__2016_DRAFT.docx

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from date this Court enters its Scheduling Order pursuant hereto.

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Dated: April 29, 2016

Respectfully submitted by:

/s/ Martin F. McDermott

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Group and Southwestern Electric Power Company*

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*Counsel for Petitioner/Intervenors Sierra Club,
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Integrity Project, and for Intervenor Clean Water
Action*

/s/ Matthew Gerhart

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*Counsel for Petitioner/Intervenors Sierra Club,
Waterkeeper Alliance, Inc. and Environmental
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Action*

/s/ Casey Roberts

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by and through the Board of Public Utilities*

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Association and National Association of Water Cos.*

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sean.sullivan@troutmansanders.com
Counsel for Petitioner Duke Energy Indiana, Inc.

CERTIFICATE OF SERVICE

I certify that on April 29, 2016, a true and correct copy of the foregoing **JOINT MOTION TO GOVERN FURTHER PROCEEDINGS** was filed through the Court's ECF system, and thereby served on all counsel of record for Petitioners in the consolidated cases.

/s/ Martin F. McDermott

Martin F. McDermott

Attorney for Respondents

To: Johnson, Harry M. (Pete)[pjohnson@hunton.com]
Cc: Levine, MaryEllen[levine.maryellen@epa.gov]; Zomer, Jessica[Zomer.Jessica@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Thomas Cmar[tcmar@earthjustice.org]; Sheehan, John A.[JSheehan@ClarkHill.com]; Grever, Tom (SHB)[TGREVER@shb.com]; Sullivan, Sean M.[Sean.Sullivan@troutmansanders.com]; joshua.smith@sierraclub.org[joshua.smith@sierraclub.org]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; Matthew Gerhart[mgerhart@earthjustice.org]; Bulleit, Kristy[kbulleit@hunton.com]
From: McDermott, Martin (ENRD)
Sent: Fri 4/29/2016 1:47:25 PM
Subject: Re: STEAM ELECTRIC REVISED BRIEFING SCHEDULE
[removed.txt](#)

Will do

Sent from my iPhone

On Apr 29, 2016, at 8:53 AM, Johnson, Harry M. (Pete) <pjohnson@hunton.com> wrote:

Martin, can you also circulate the draft joint motion for review before you file it?

Thanks,

Pete

From: Johnson, Harry M. ("Pete")
Sent: Friday, April 29, 2016 7:58 AM
To: McDermott, Martin (ENRD); Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Thomas Cmar; 'Sheehan, John A.'; Grever, Tom (SHB); 'Sullivan, Sean M.'; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Matthew Gerhart
Cc: Bulleit, Kristy
Subject: RE: STEAM ELECTRIC REVISED BRIEFING SCHEDULE

Martin,

After our call yesterday afternoon about the remaining points in dispute, I can confirm agreement on 18,000/9,000 words for Industry and Environmental petitioners' opening and reply briefs. Government has word count parity with

petitioners. 35 pages for motions regarding record. Duke and City Utilities also have confirmed their assent.

I can't recall our specific discussion about word counts for intervenor briefs, but we have no objection to raising them to 9,000 from 8,750 if that is the consensus.

Please let me know if there are any outstanding questions or issues. Regards,

Pete

<image001.jpg> **Harry M. Johnson, III**

Partner

pjohnson@hunton.com

p 804.788.8784

[bio](#) | [vCard](#)

Hunton & Williams LLP

hunton.com

From: Johnson, Harry M. ("Pete")

Sent: Wednesday, April 27, 2016 5:48 PM

To: McDermott, Martin (ENRD); Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Thomas Cmar; 'Sheehan, John A.'; Grever, Tom (SHB); 'Sullivan, Sean M.'; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Matthew Gerhart

Cc: Bulleit, Kristy

Subject: RE: STEAM ELECTRIC REVISED BRIEFING SCHEDULE

Martin, et al.,

Because the Industry Petitioners' joint brief will include the separate arguments of multiple parties (eg, Duke and City Utilities filed separate petitions), we continue to

believe that 20,000 and 10,000 words, respectively, are necessary and appropriate for the IPs' opening and reply briefs. We had accepted your earlier suggested limit of 7500 words for intervenor briefs (this latest proposal increases them to 8750), and we strongly prefer to have the IPs' word count limits focus more on the opening and reply briefs. Our 20,000/10,000 proposal is still less than the 28,000/14,000 limits in the scheduling orders from the 2nd Circuit's 316(b) cases in 2006 and 2015.

Also, because of the nature of the expected motion(s) to complete the record, we do not feel 30 pages is sufficient. We can agree to drop our request to 35 pages.

Regards,

Pete

<image001.jpg> **Harry M. Johnson, III**

Partner

pjohnson@hunton.com

p 804.788.8784

[bio](#) | [vCard](#)

Hunton & Williams LLP

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From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]

Sent: Wednesday, April 27, 2016 3:24 PM

To: Johnson, Harry M. ("Pete"); Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Bulleit, Kristy; Thomas Cmar; 'Sheehan, John A.'; Grever, Tom (SHB); 'Sullivan, Sean M.'; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Matthew Gerhart

Subject: STEAM ELECTRIC REVISED BRIEFING SCHEDULE

Dear Counsel – attached is a revised briefing schedule for your consideration. While EPA believes that the prior proposal allowed for sufficient word counts, in the interest of

compromise we propose a schedule that allows Industry Petitioners and Environmental Petitioners to each file merits briefs (including intervenor briefs) totaling 35,000 words – 17,500 (opening) plus 8,750 (intervention) plus 8,750 (reply). EPA would, as before, maintain word count parity with the Petitioners. We left the timing unchanged.

As for the motions briefing, we propose a compromise of 50% increase over FRAP 27 page limits.

We also agree with Pete's suggestion that we include language about accommodating scheduling conflicts.

Please let me know if we can proceed on this basis. Martin

To: Johnson, Harry M. ("Pete") [pjohnson@hunton.com]; Thomas Cmar [tcmar@earthjustice.org]; joshua.smith@sierraclub.org[joshua.smith@sierraclub.org]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; Grever, Tom (SHB) [TGREVER@shb.com]; Sullivan, Sean M. [Sean.Sullivan@troutmansanders.com]; mgerhart@earthjustice.org[mgerhart@earthjustice.org]; Sheehan, John A. [JSheehan@ClarkHill.com]
Cc: Levine, MaryEllen [levine.maryellen@epa.gov]; Zomer, Jessica [Zomer.Jessica@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Bulleit, Kristy [kbulleit@hunton.com]
From: McDermott, Martin (ENRD)
Sent: Thur 4/14/2016 7:55:56 PM
Subject: RE: Motion to Govern in Steam Electric removed.txt

Pete -- Fine with me. I will await approval from other parties before filing it. Martin

From: Johnson, Harry M. ("Pete") [mailto:pjohnson@hunton.com]
Sent: Thursday, April 14, 2016 3:14 PM
To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>; Thomas Cmar <tcmar@earthjustice.org>; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB) <TGREVER@shb.com>; Sullivan, Sean M. <Scan.Sullivan@troutmansanders.com>; mgerhart@earthjustice.org; Sheehan, John A. <JSheehan@ClarkHill.com>
Cc: Levine, MaryEllen <levine.maryellen@epa.gov>; Zomer, Jessica <Zomer.Jessica@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Bulleit, Kristy <kbulleit@hunton.com>
Subject: RE: Motion to Govern in Steam Electric
Importance: High

Counsel,

Here is a draft motion for your consideration. It would extend the deadline for 2 weeks until 4/29 to submit a joint motion for an order governing the proceedings.

Martin, it is set up for your signature as with the last one – is that OK?

Regards,



Harry M. Johnson, III

Partner

p 804.788.8784

[bio](#) | [vCard](#)

Hunton & Williams LLP

[hunton.com](#)

From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]
Sent: Wednesday, April 13, 2016 2:59 PM
To: Johnson, Harry M. ("Pete"); Thomas Cmar; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB); Sullivan, Sean M.; mgerhart@earthjustice.org; Sheehan, John A.
Cc: Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Bulleit, Kristy
Subject: RE: Motion to Govern in Steam Electric

Pete – given the impending April 15 “motion to govern” filing date, I think it would be prudent to ask the court to extend that date for a week or two to allow the parties time to try to work out the issues raised by your proposal. If you agree, could you put together such a motion? I would think that all parties would concur. Martin

From: Johnson, Harry M. ("Pete") [<mailto:pjohnson@hunton.com>]
Sent: Tuesday, April 12, 2016 10:56 AM
To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>; 'Cmar, Thomas' <tcmar@nrdc.org>; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB) <TGREVER@shb.com>; Sullivan, Sean M. <Sean.Sullivan@troutmansanders.com>; mgerhart@earthjustice.org; Sheehan, John A. <JSheehan@ClarkHill.com>
Cc: Levine, MaryEllen <levine.maryellen@epa.gov>; Zomer, Jessica <Zomer.Jessica@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Bulleit, Kristy <kbulleit@hunton.com>
Subject: RE: Motion to Govern in Steam Electric

Counsel,

Here is the proposed outline for a case management order on behalf of UWAG, SWEPCo, and Union Electric. Duke Energy and City Utilities of Springfield are in agreement with it.

We look forward to your comments. Regards,



Harry M. Johnson, III

Partner

pjohnson@hunton.com

p 804.788.8784

[bio](#) | [vCard](#)

Hunton & Williams LLP

hunton.com

From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]

Sent: Friday, April 01, 2016 2:56 PM

To: Johnson, Harry M. ("Pete"); Bulleit, Kristy; 'Cmar, Thomas'; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB); Sullivan, Sean M.; mgerhart@earthjustice.org; Sheehan, John A.

Cc: Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma

Subject: Motion to Govern in Steam Electric

Counsel -- Preparatory to upcoming discussions on a motion to govern, could you please advise as to your current thinking on: (1) whether you intend to file consolidated/joint briefs (I am aware that the environmental petitioners intend to file jointly); (2) desired word counts, if at variance with standard counts; and (3) how many days you might want (separate from/irrespective of the timing of any initial motions that may be filed) to file your opening briefs, and how many days for preparation of any intervenor briefs. Thanks, Martin

To: 'Johnson, Harry M. ("Pete")'[pjohnson@hunton.com]; McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]; joshua.smith@sierraclub.org[joshua.smith@sierraclub.org]; casey.roberts@sierraclub.org[casey.roberts@sierraclub.org]; Grever, Tom (SHB)[TGREVER@shb.com]; Sullivan, Sean M.[Sean.Sullivan@troutmansanders.com]; Sheehan, John A.[JSheehan@ClarkHill.com]; Thomas Cmar[tcmr@earthjustice.org]
Cc: Levine, MaryEllen[levine.maryellen@epa.gov]; Zomer, Jessica[Zomer.Jessica@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Bulleit, Kristy[kbulleit@hunton.com]
From: Matthew Gerhart
Sent: Tue 4/12/2016 3:18:56 PM
Subject: RE: Motion to Govern in Steam Electric removed.txt

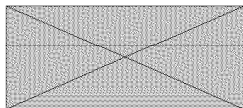
I'm updating the thread to reflect the correct email address for Thom Cmar. Thanks.

From: Johnson, Harry M. ("Pete") [mailto:pjohnson@hunton.com]
Sent: Tuesday, April 12, 2016 8:56 AM
To: McDermott, Martin (ENRD); 'Cmar, Thomas'; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB); Sullivan, Sean M.; Matthew Gerhart; Sheehan, John A.
Cc: Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma; Bulleit, Kristy
Subject: RE: Motion to Govern in Steam Electric

Counsel,

Here is the proposed outline for a case management order on behalf of UWAG, SWEPCo, and Union Electric. Duke Energy and City Utilities of Springfield are in agreement with it.

We look forward to your comments. Regards,



Harry M. Johnson, III

Partner

pjohnson@hunton.com
p 804.788.8784

[bio](#) | [vCard](#)

Hunton & Williams LLP

hunton.com

From: McDermott, Martin (ENRD) [mailto:Martin.McDermott@usdoj.gov]

Sent: Friday, April 01, 2016 2:56 PM

To: Johnson, Harry M. ("Pete"); Bulleit, Kristy; 'Cmar, Thomas'; joshua.smith@sierraclub.org; casey.roberts@sierraclub.org; Grever, Tom (SHB); Sullivan, Sean M.; mgerhart@earthjustice.org; Sheehan, John A.

Cc: Levine, MaryEllen; Zomer, Jessica; Kupchan, Simma

Subject: Motion to Govern in Steam Electric

Counsel -- Preparatory to upcoming discussions on a motion to govern, could you please advise as to your current thinking on: (1) whether you intend to file consolidated/joint briefs (I am aware that the environmental petitioners intend to file jointly); (2) desired word counts, if at variance with standard counts; and (3) how many days you might want (separate from/irrespective of the timing of any initial motions that may be filed) to file your opening briefs, and how many days for preparation of any intervenor briefs. Thanks, Martin

To: Johnson, Harry M. ("Pete") [pjohnson@hunton.com]; Bulleit, Kristy [kbulleit@hunton.com]; 'Cmar, Thomas' [tcmar@nrdc.org]; joshua.smith@sierraclub.org [joshua.smith@sierraclub.org]; casey.roberts@sierraclub.org [casey.roberts@sierraclub.org]; Grever, Tom (SHB) [TGREVER@shb.com]; Sullivan, Sean M. [Sean.Sullivan@troutmansanders.com]; mgerhart@earthjustice.org [mgerhart@earthjustice.org]; Sheehan, John A. [JSheehan@ClarkHill.com]
Cc: Levine, MaryEllen [levine.maryellen@epa.gov]; Zomer, Jessica [Zomer.Jessica@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]
From: McDermott, Martin (ENRD)
Sent: Fri 4/1/2016 6:56:16 PM
Subject: Motion to Govern in Steam Electric

Counsel -- Preparatory to upcoming discussions on a motion to govern, could you please advise as to your current thinking on: (1) whether you intend to file consolidated/joint briefs (I am aware that the environmental petitioners intend to file jointly); (2) desired word counts, if at variance with standard counts; and (3) how many days you might want (separate from/irrespective of the timing of any initial motions that may be filed) to file your opening briefs, and how many days for preparation of any intervenor briefs. Thanks, Martin

To: Johnson, Harry M. ("Pete") [pjohnson@hunton.com]; Grever, Tom (SHB) [TGREVER@shb.com]; Thomas Cmar [tcmar@earthjustice.org]; Sheehan, John A. [JSheehan@ClarkHill.com]; casey.roberts@sierraclub.org [casey.roberts@sierraclub.org]; Sullivan, Sean M. [Sean.Sullivan@troutmansanders.com]; mgerhart@earthjustice.org [mgerhart@earthjustice.org]
Cc: Kupchan, Simma [Kupchan.Simma@epa.gov]; Levine, MaryEllen [levine.maryellen@epa.gov]; Bulleit, Kristy [kbulleit@hunton.com]
From: McDermott, Martin (ENRD)
Sent: Fri 3/25/2016 3:34:49 PM
Subject: RE: STEAM ELECTRIC ABEYANCE MOTION
[removed.txt](#)

Pete – I'm confused by your email. The intent of the current proposed motion is simply to stay the case for a short time while the parties endeavor to work out -- in the context of a motion to govern -- the types of issues you raise in your email. What about the "current form of the motion" do you find troubling other than the April 8 date, which I am amenable to moving to April 15? The environmental petitioners and American Water Works Assn. have agreed to the motion in its current format and based on my discussion with the clerk, I believe we need to get this on file promptly. Martin

Martin,

Conceptually, continuing the stay to seek agreement upon a scheduling order is acceptable, but we have concerns about the current form of the motion because of our dispute about the contents of the public record.

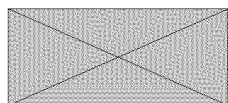
Kristy's and my clients would be willing to agree to hold the case in abeyance while the parties work on a scheduling order. However, we believe the scheduling order should set a date for EPA to file the certified index to the record, then allow a short time (maybe 14 days) for the parties to file any motions regarding the record. Deadlines for filing briefs should be triggered by final resolution of those motions. The draft motion to continue the stay would need to reflect this expectation in some fashion.

For instance, petitioners' briefs could be due 90 days after all the record issues are fully resolved. If the court denies the motions regarding the record, the petitioners' briefs would be due 90 days from entry of the court's order. If, on the other hand, the court gives EPA, say, 30 days to produce unredacted versions of certain documents, the 90-day period would run from the date EPA complies.

I also suspect that April 8 is too aggressive. We have several latecomers to the case and lots of counsel, so the scheduling order may take more than 2 weeks to hammer out, especially if some are taking vacations. I would suggest April 15.

Regards,

Pete



Harry M. Johnson, III

Partner

pjohnson@hunton.com

p 804.788.8784

[bio](#) | [vCard](#)

Hunton & Williams LLP

hunton.com

From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]

Sent: Wednesday, March 23, 2016 1:40 PM

To: Johnson, Harry M. ("Pete"); Grever, Tom (SHB); Thomas Cmar; Sheehan, John A.; casey.roberts@sierraclub.org; Sullivan, Sean M.; mgerhart@earthjustice.org

Cc: Kupchan, Simma; Levine, MaryEllen; Bulleit, Kristy

Subject: RE: STEAM ELECTRIC ABEYANCE MOTION

Pete (and others) – I am checking with EPA on the record index preparation. In the short term, I would like to get something on file to let the clerk know that the parties are working on a motion to govern. Is the draft abeyance motion acceptable? Martin

From: Johnson, Harry M. ("Pete") [<mailto:pjohnson@hunton.com>]

Sent: Wednesday, March 23, 2016 11:41 AM

To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>; Grever, Tom (SHB) <TGREVER@shb.com>; Thomas Cmar <tcmar@earthjustice.org>; Sheehan, John A. <JSheehan@ClarkHill.com>; casey.roberts@sierraclub.org; Sullivan, Sean M. <Sean.Sullivan@troutmansanders.com>; mgerhart@earthjustice.org

Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>; Bulleit, Kristy <kbulleit@hunton.com>

Subject: RE: STEAM ELECTRIC ABEYANCE MOTION

Martin,

Kristy and I are discussing these issues with our clients now, and we will get back to you asap. As you know, we have issues with the public record for the rule and are likely to file a motion in that regard, so I strongly suspect we will want that issue addressed in any case management order/briefing schedule. Do you have an idea as to when you will be filing the index to the certified record?

Thanks,

Pete



Harry M. Johnson, III

Partner

pjohnson@hunton.com

p 804.788.8784

[bio](#) | [vCard](#)

Hunton & Williams LLP

hunton.com

From: McDermott, Martin (ENRD) [<mailto:Martin.McDermott@usdoj.gov>]
Sent: Tuesday, March 22, 2016 12:52 PM
To: Bulleit, Kristy; Johnson, Harry M. ("Pete"); Grever, Tom (SHB); Thomas Cmar; Sheehan, John A.; casey.roberts@sierraclub.org; Sullivan, Sean M.; mgerhart@earthjustice.org
Cc: Kupchan, Simma; Levine, MaryEllen
Subject: STEAM ELECTRIC ABEYANCE MOTION

Counsel – please advise if you consent to the attached procedural motion. The clerk is looking for this to be filed soon. Also, it would be helpful if you could send me an email letting me know (1) whether you intend to file jointly with others, and if so, with whom; (2) the date that you would propose for filing your opening brief; (3) proposed word counts for the foregoing, for any intervenor brief, and for any reply; and (4) any other matter you believe might be appropriate to include in a motion to govern. Also, if I've inadvertently left anyone off this email distribution or off the motion, please let me know. Thanks. Martin

To: Johnson, Harry M. (Pete)[pjohnson@hunton.com]
Cc: McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]; Matthew Gerhart[mgerhart@earthjustice.org]; Casey Roberts (casey.roberts@sierraclub.org)[casey.roberts@sierraclub.org]; Bulleit, Kristy[kbulleit@hunton.com]; Levine, MaryEllen[levine.maryellen@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]
From: Thomas Cmar
Sent: Mon 1/4/2016 10:37:11 PM
Subject: Re: Steam Electric 120-filing motion

We'd be fine with that.

Sent from my iPhone

> On Jan 4, 2016, at 4:22 PM, Johnson, Harry M. (Pete) <pjohnson@hunton.com> wrote:
>
> Small technical point -- Shouldn't Intervenor CWA be listed somewhere as a party that also consents to the motion?
>
>
> Harry M. ("Pete") Johnson, III
> HUNTON & WILLIAMS LLP
> Riverfront Plaza, East Tower
> 951 East Byrd Street
> Richmond, VA 23219
> Phone: (804) 788-8784
> Fax: (804) 343-4538
> eMail: pjohnson@hunton.com
> website: www.hunton.com
>
> -----Original Message-----
> From: Thomas Cmar [mailto:tcmar@earthjustice.org]
> Sent: Monday, January 04, 2016 5:16 PM
> To: McDermott, Martin (ENRD)
> Cc: Johnson, Harry M. ("Pete"); Matthew Gerhart; Casey Roberts (casey.roberts@sierraclub.org); Bulleit, Kristy; Levine, MaryEllen; Kupchan.Simma@epa.gov
> Subject: Re: Steam Electric 120-filing motion
>
> Hi Martin,
>
> Thanks for drafting this. It looks good to Environmental Petitioners.
>
> Best,
>
> Thom
>
> Sent from my iPhone
>
> On Jan 4, 2016, at 3:11 PM, McDermott, Martin (ENRD)
<Martin.McDermott@usdoj.gov<mailto:Martin.McDermott@usdoj.gov>> wrote:
>
> Counsel – please let me know if the attached meets with your approval. Thanks. Martin
<ENV_DEFENSE-#751496-v1-STEAM_ELECTRIC_DRAFT_STAY_MOTION_JAN__2016.docx>

To: McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]
Cc: Johnson, Harry M. (Pete)[pjohanson@hunton.com]; Matthew Gerhart[mgerhart@earthjustice.org]; Casey Roberts (casey.roberts@sierraclub.org)[casey.roberts@sierraclub.org]; kbulleit@hunton.com[kbulleit@hunton.com]; Levine, MaryEllen[levine.maryellen@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]
From: Thomas Cmar
Sent: Mon 1/4/2016 10:16:28 PM
Subject: Re: Steam Electric 120-filing motion

Hi Martin,

Thanks for drafting this. It looks good to Environmental Petitioners.

Best,

Thom

Sent from my iPhone

On Jan 4, 2016, at 3:11 PM, McDermott, Martin (ENRD)
<Martin.McDermott@usdoj.gov<mailto:Martin.McDermott@usdoj.gov>> wrote:

Counsel – please let me know if the attached meets with your approval. Thanks. Martin
<ENV_DEFENSE-#751496-v1-STEAM_ELECTRIC_DRAFT_STAY_MOTION_JAN__2016.docx>

To: McDermott, Martin (ENRD)[Martin.McDermott@usdoj.gov]
Cc: Casey Roberts (casey.roberts@sierraclub.org)[casey.roberts@sierraclub.org]; Johnson, Harry M. ("Pete")[pjohnson@hunton.com]; McHugh, Timothy L.[TMcHugh@hunton.com]; joshua.smith@sierraclub.org[joshua.smith@sierraclub.org]; mgerhart@earthjustice.org[mgerhart@earthjustice.org]; tcmar@earthjustice.org[tcmar@earthjustice.org]; andrea.issod@sierraclub.org[andrea.issod@sierraclub.org]; Zomer, Jessica[Zomer.Jessica@epa.gov]; Levine, MaryEllen[levine.maryellen@epa.gov]
From: Bulleit, Kristy
Sent: Mon 1/4/2016 2:00:27 PM
Subject: Re: Steam Electric litigation

Thanks, Martin. UWAG agrees. We will look forward to your draft.

Best regards,
Kristy

Sent from my iPhone

On Dec 30, 2015, at 5:11 PM, McDermott, Martin (ENRD)
<Martin.McDermott@usdoj.gov<mailto:Martin.McDermott@usdoj.gov>> wrote:

Counsel – now that intervention has been granted, I suggest that the parties enter into a joint motion to have this matter held in abeyance for the duration of the 120-day petition-filing period, with the parties to file a motion to govern further proceedings within 30 days thereafter. I would be happy to circulate a draft of such a motion, if not this week then early next. Does this approach meet with your approval? (Please let me know if I neglected to copy anyone on this email.) Thanks. Martin

Final Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Industry

Summary

EPA signed a final rule to revise the technology-based effluent limitations guidelines and standards that would strengthen the existing controls on discharges from steam electric power plants. The final rule sets the first federal limits on the amount of toxic metals and other harmful pollutants that steam electric power plants are allowed to discharge in several of their largest sources of wastewater, based on technology improvements in the steam electric power industry over the last three decades.

- More than 23,000 miles of rivers and streams are damaged by steam electric plant discharges
- On an annual basis, the rule is projected to reduce the amount of toxic metals, nutrients, and other pollutants that steam electric power plants are allowed to discharge by 1.4 billion pounds and reduce water withdrawal by 57 billion gallons.
- Estimated annual compliance costs for the final rule are \$480 million.

Background

Steam electric power plants discharge large volumes of wastewater, containing vast quantities of pollutants, into waters of the United States. The pollutants include both toxic and bioaccumulative pollutants such as arsenic, mercury, selenium, chromium, and cadmium. Today, these discharges account for about 30 percent of all toxic pollutants discharged into surface waters by all industrial

categories regulated under the Clean Water Act. The electric power industry has made great strides to reduce air pollutant emissions under Clean Air Act programs. Yet many of these pollutants are transferred to the wastewater as plants employ technologies to reduce air pollution.

The pollutants discharged by this industry can cause severe health and environmental problems in the form of cancer and non-cancer risks in humans, lowered IQ among children, and deformities and reproductive harm in fish and wildlife. Many of these pollutants, once in the environment, remain there for years. Due to their close proximity to these discharges and relatively high consumption of fish, some minority and low-income communities have greater exposure to, and are therefore at greater risk from, pollutants in steam electric power plant discharges.

There are, however, affordable technologies that are widely available, and already in place at some plants, which are capable of reducing or eliminating steam electric power plant discharges. In the several decades since the steam electric ELGs were last revised, such technologies have increasingly been used at plants. This final rule is the first to ensure that plants in the steam electric industry employ technologies designed to reduce discharges of toxic metals and other harmful pollutants discharged in the plants' largest sources of wastewater.

Who is affected by this regulation?

Certain coal-fired steam electric power plants will be affected by this rule. EPA estimates that about 12 percent of steam electric power plants will have to make new investments to meet the new requirements of this rule.

What does this rule require?

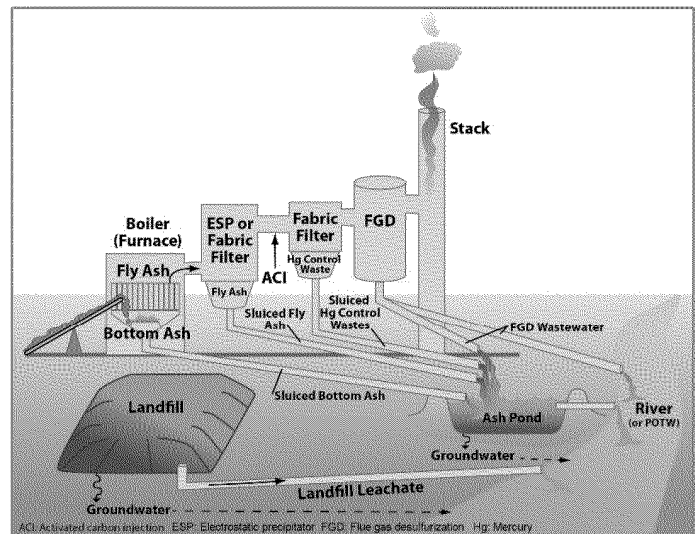
Generally, the final rule would establish new or additional requirements for wastewater streams from the following processes and byproducts associated with steam electric power generation: flue gas desulfurization, fly ash, bottom ash, flue gas mercury control, and gasification of fuels such as coal and petroleum coke.

The final rule phases in the new, more stringent requirements in the form of effluent limits for arsenic, mercury, selenium, and nitrogen for wastewater discharged from wet scrubber systems (flue gas desulfurization wastestream) and zero discharge of pollutants in ash transport water that must be incorporated into the plants' NPDES permits.

The rule encourages plants to commit to meeting even more stringent limits for pollutants in the flue gas desulfurization wastewater, plus a limit on total dissolved solids, based on evaporation technology, by giving them until the end of 2023 to meet the more stringent limits.

The rule also establishes zero discharge pollutant limits for flue gas mercury control wastewater, and stringent limits on arsenic, mercury, selenium and total dissolved solids in coal gasification wastewater, based on evaporation technology.

The rule also includes even more stringent controls for any new coal or petroleum coke plants that may be built in the future.



How much time does a steam electric power plant have before implementation?

Each plant must comply between 2018 and 2023 depending on when it needs a new Clean Water Act permit.

What are the benefits of this regulation?

There are numerous documented instances of environmental impacts associated with steam electric power plant discharges including widespread aquatic life impacts and toxic metal bioaccumulation in wildlife. In addition, there are increased cancer and non-cancer risks to humans from the pollutants. This regulation will greatly reduce these impacts. Of the benefits that could be monetized, EPA projects \$451 to \$566 million per year in benefits associated with this rule.

What are the costs of implementing this rule?

Compliance costs of the final rule are economically achievable, with an annual estimated cost of \$480 million per year.

Analysis shows that the rule will have minimal impacts on electricity prices and the amount of electricity generating capacity.

Where can I find more information?

For technical information about this rule, please contact Ronald Jordan by email at Jordan.ronald@epa.gov or by telephone at 202-566-1003. For economic information about this rule, please contact James Covington by email at Covington.james@epa.gov or by phone at 202-566-1034. You can also learn more about this rule by visiting EPA's website at:
<http://www2.epa.gov/eg/steam-electric-power-generating-effluent-guidelines-2015-final-rule>

To: Aldridge, Elizabeth[ealdridge@hunton.com]
Cc: Zobrist, Marcus[Zobrist.Marcus@epa.gov]
From: Nagle, Deborah
Sent: Thur 2/11/2016 11:33:29 PM
Subject: RE: Steam Electric ELG Implementation

Liz-

Marcus Zobrist is the best person to contact first. I have cced him in this email response.

-Deborah

From: Aldridge, Elizabeth [mailto:ealdridge@hunton.com]
Sent: Thursday, February 11, 2016 2:21 PM
To: Nagle, Deborah <Nagle.Deborah@epa.gov>
Subject: Steam Electric ELG Implementation

Hi Deborah,

We have several clients beginning work on permit renewals under the new Steam Electric ELG rule. Could you please let us know who is the best contact person for implementation questions/issues under the new rule?

Many thanks in advance.

Liz Aldridge

 **Elizabeth Aldridge**

Counsel

ealdridge@hunton.com
p 804.788.8549

[bio](#) | [vCard](#)

Hunton & Williams LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219

hunton.com

To: Wood, Robert[Wood.Robert@epa.gov]
From: Bulleit, Kristy
Sent: Wed 10/28/2015 7:06:57 PM
Subject: ELG rule to the Federal Register

Rob, has EPA sent the final steam electric effluent limitations guidelines rule to the Federal Register yet? If not, are you still on track for publication next week?